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IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Note by the Secretary-General

The Secretary-General has the honour to transmit herewith the twenty-ninth report of the International Labour Organization under article 18 of the International Covenant on Economic, Social and Cultural Rights, submitted in accordance with Economic and Social Council resolution 1988 (LX).*

[4 March 2002]

* Reproduced as received.

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CONTENTS

	Paragraphs	Page
Introduction	1 - 3	3
I. PRINCIPAL ILO CONVENTIONS RELEVANT TO ARTICLES 6-10 AND 13 OF THE COVENANT	4	3
II. INDICATIONS CONCERNING THE SITUATION OF INDIVIDUAL COUNTRIES	5 - 98	7
A. Benin	8 - 20	7
B. Czech Republic	21 - 39	10
C. Ireland	40 - 48	15
D. United Kingdom	49 - 76	16
E. United Kingdom (Non-Metropolitan Territories)	77 - 86	24
F. Trinidad and Tobago	87 - 98	26
Annex: Index of countries and of relevant information supplied by the ILO since 1978		30

Introduction

1. The present report has been established according to the arrangements approved by the Governing Body of the International Labour Office[1] to give effect to resolution 1988 (LX) of 11 May 1976 of the United Nations Economic and Social Council requesting specialized agencies to submit reports, in accordance with article 18 of the International Covenant on Economic, Social and Cultural Rights, on the progress made in achieving the observance of the provisions of the Covenant falling within the scope of their activities. According to these arrangements, the International Labour Office is entrusted with the task of communicating to the United Nations, for presentation to the Committee on Economic, Social and Cultural Rights, information on the results of the operation of various ILO supervisory procedures in the fields covered by the Covenant. It should remain open for the Committee of Experts on the Application of Conventions and Recommendations to report on particular situations whenever it deems this desirable or when specifically requested to do so by the Committee on Economic, Social and Cultural Rights.

2. This report will follow the approach adopted since 1985, and will contain: (a) indications concerning the principal ILO Conventions relevant to articles 6-10 and 13 of the Covenant; and (b) indications concerning ratification of these Conventions and comments made by ILO supervisory bodies with regard to the application of these Conventions by the States concerned (insofar as the points at issue appear to have a bearing also on the provisions of the Covenant). The latter indications are based mainly on the comments of the Committee of Experts resulting from its examination of the reports on the Conventions in question. Account was also taken of the conclusions and recommendations adopted under constitutional procedures for the examination of representations or complaints and, in the case of article 8 of the Covenant, of the conclusions and recommendations of the Committee on Freedom of Association of the ILO Governing Body following examination of complaints alleging violation of trade union rights. Given the increased recourse to the Joint ILO/UNESCO allegations procedure concerning teaching personnel, information on cases examined there are added under article 13 of the Covenant, when relevant to the country reports being examined.[2]

3. The list of countries for which information has been provided in the present report appears in the Contents. A recapitulatory list of States parties to the Covenant and of ILO reports containing information concerning them will be found in the Annex.

I. PRINCIPAL ILO CONVENTIONS RELEVANT TO ARTICLES 6-10 AND 13 OF THE COVENANT

4. The following is a list of the principal ILO Conventions relevant to articles 6-10 and 13 of the Covenant.[3] Indications on the ratification of these Conventions by each State concerned are given in section II (indications concerning the situation of individual countries).

Article 6 of the Covenant

Unemployment Convention, 1919 (No. 2)
Forced Labour Convention, 1930 (No. 29)
Fee-Charging Employment Agencies Convention, 1933 (No. 34)
Employment Service Convention, 1948 (No. 88)
Fee-Charging Employment Agencies Convention, 1949 (No. 96)

Abolition of Forced Labour Convention, 1957 (No. 105)
Indigenous and Tribal Populations Convention, 1957 (No. 107)
Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117)
Employment Policy Convention, 1964 (No. 122)
Paid Educational Leave Convention, 1974 (No. 140)
Human Resources Development Convention, 1975 (No. 142)
Workers with Family Responsibilities Convention, 1981 (No. 156)
Termination of Employment Convention, 1982 (No. 158)
Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159)
Employment Promotion and Protection Against Unemployment Convention, 1988 (No. 168), Part II
Indigenous and Tribal Peoples Convention, 1989 (No. 169)

Article 7 of the Covenant

Remuneration

Minimum Wage-Fixing Machinery Convention, 1928 (No. 26)
Minimum Wage-Fixing Machinery (Agriculture) Convention, 1951 (No. 99)
Minimum Wage-Fixing Machinery Convention, 1970 (No. 131)

Equal remuneration

Equal Remuneration Convention, 1951 (No. 100)

Safe and healthy working conditions

White Lead (Painting) Convention, 1921 (No. 13)
Marking of Weight (Packages Transported by Vessels) Convention, 1929 (No. 27)
Protection Against Accidents (Dockers) Convention, 1929 (No. 28)
Protection Against Accidents (Dockers) Convention, 1932 (No. 32)
Safety Provisions (Building) Convention, 1937 (No. 62)
Labour Inspection Convention, 1947 (No. 81)
Radiation Protection Convention, 1960 (No. 115)
Guarding of Machinery Convention, 1963 (No. 119)
Hygiene (Commerce and Offices) Convention, 1964 (No. 120)
Maximum Weight Convention, 1967 (No. 127)
Labour Inspection (Agriculture) Convention, 1969 (No. 129)
Benzene Convention, 1971 (No. 136)
Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148)
Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152)
Occupational Safety and Health Convention, 1981 (No. 155)
Occupational Health Services Convention, 1985 (No. 161)
Asbestos Convention, 1986 (No. 162)

Safety and Health in Construction Convention, 1988 (No. 167)
Chemicals Convention, 1990 (No. 170)
Night Work Convention, 1990 (No. 171)
Labour Inspection (Seafarers) Convention, 1996 (No. 178)

Rest, limitation of working hours and holidays with pay

Hours of Work (Industry) Convention, 1919 (No. 1)
Weekly Rest (Industry) Convention, 1921 (No. 14)
Hours of Work (Commerce and Offices) Convention, 1930 (No. 30)
Forty-Hour Week Convention, 1935 (No. 47)
Holidays with Pay Convention, 1936 (No. 52)
Holidays with Pay (Agriculture) Convention, 1957 (No. 101)
Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106)
Holidays with Pay Convention (Revised), 1970 (No. 132)
Part-time Work Convention, 1994 (No. 175)
Homework Convention, 1996 (No. 177)
Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180)

Article 8 of the Covenant

Right of Association (Agriculture) Convention, 1921 (No. 11)
Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87)
Right to Organize and Collective Bargaining Convention, 1949 (No. 98)
Workers' Representatives Convention, 1971 (No. 135)
Rural Workers' Organizations Convention, 1975 (No. 141)
Labour Relations (Public Service) Convention, 1978 (No. 151)
Collective Bargaining Convention, 1981 (No. 154)

Article 9 of the Covenant

Workmen's Compensation (Agriculture) Convention, 1921 (No. 12)
Workmen's Compensation (Accidents) Convention, 1925 (No. 17)
Workmen's Compensation (Occupational Diseases) Convention, 1925 (No. 18)
Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)
Sickness Insurance (Industry) Convention, 1927 (No. 24)
Sickness Insurance (Agriculture) Convention, 1927 (No. 25)
Old-Age Insurance (Industry, etc.) Convention, 1933 (No. 35)
Old-Age Insurance (Agriculture) Convention, 1933 (No. 36)
Invalidity Insurance (Industry, etc.) Convention, 1933 (No. 37)
Invalidity Insurance (Agriculture) Convention, 1933 (No. 38)
Survivor's Insurance (Industry, etc.) Convention, 1933 (No. 39)
Survivor's Insurance (Agriculture) Convention, 1933 (No. 40)
Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42)
Unemployment Provisions Convention, 1934 (No. 44)
Maintenance of Migrants' Pension Rights Convention, 1935 (No. 48)
Social Security (Minimum Standards) Convention, 1952 (No. 102)

Equality of Treatment (Social Security) Convention, 1962 (No. 118)
Employment Injury Benefits Convention, 1964 (No. 121)
Invalidity, Old-Age and Survivor's Benefits Convention, 1967 (No. 128)
Medical Care and Sickness Benefits Convention, 1969 (No. 130)
Maintenance of Social Security Rights Convention, 1982 (No. 157)
Employment Promotion and Protection Against Unemployment, 1988 (No. 168)

Article 10 of the Covenant

(a) Maternity protection (re. para. 2)

Maternity Protection Convention, 1919 (No. 3)
Maternity Protection Convention (Revised), 1952 (No. 103)
Maternity Protection Convention (Revised), 2000 (No. 183)

(b) Protection of children and young persons in relation to employment and work (re. para. 3)

Minimum Age (Industry) Convention, 1919 (No. 5)
Minimum Age (Sea) Convention, 1920 (No. 7)
Minimum Age (Agriculture) Convention, 1921 (No. 10)
Minimum Age (Trimmers and Stokers) Convention, 1921 (No. 15)
Minimum Age (Non-Industrial Employment) Convention, 1932 (No. 33)
Minimum Age (Sea) Convention (Revised), 1936 (No. 58)
Minimum Age (Industry) Convention (Revised), 1937 (No. 59)
Minimum Age (Non-Industrial Employment) Convention (Revised), 1937 (No. 60)
Minimum Age (Fisherman) Convention, 1959 (No. 112)
Social Policy (Basic Aims and Standards) Convention, 1952 (No. 117)
Minimum Age (Underground Work) Convention, 1965 (No. 123)
Minimum Age Convention, 1973 (No. 138)
Night Work of Young Persons (Industry) Convention, 1919 (No. 6)
Night Work (Bakeries) Convention, 1925 (No. 20)
Night Work of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 79)
Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90)
White Lead (Painting) Convention, 1921 (No. 13) (article 3)
Radiation Protection Convention, 1960 (No. 115) (article 7)
Maximum Weight Convention, 1967 (No. 127) (article 7)
Benzene Convention, 1971 (No. 136) (article 11)
Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16)
Medical Examination (Seafarers) Convention, 1946 (No. 73)
Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77)
Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 78)
Medical Examination (Fishermen) Convention, 1959 (No. 113)
Medical Examination of Young Persons (Underground Work) Convention, 1965 (No. 124)
Worst Forms of Child Labour Convention, 1999 (No. 182)

Article 13 of the Covenant

Human Resources Development Convention, 1975 (No. 142)

Reference is also made, when appropriate, to the ILO/UNESCO Joint Recommendation concerning the status of teachers, 1966, and to the work of the Joint ILO/UNESCO Committee which supervises their application.

II. INDICATIONS CONCERNING THE SITUATION OF INDIVIDUAL COUNTRIES

5. For each article of the Covenant under consideration, these indications show the state of the ratification of the corresponding Conventions by the country in question, and references to the relevant comments of the supervisory bodies with regard to the application of these Conventions. Full copies of the comments of the Committee of Experts are available at the secretariat (in English, French and Spanish) and should be consulted for further details.

6. The absence of any such reference signifies either that there are no comments at the present time regarding the application of a particular Convention, or that the comments that have been made deal with points not relating to the provisions of the Covenant or to matters (for example, simple requests for information) which it would not appear to be necessary to deal with at this stage, or again that the Government's reply concerning the application of a Convention on which comments had been made has not yet been examined by the Committee of Experts.

7. When references are made to the "observation" of the Committee of Experts, their texts are published in the report of the Committee for the same year (Report III (Part 1 A) of the corresponding session of the International Labour Conference). In addition, comments have been formulated in requests for information addressed directly by the Committee of Experts to the Governments in question; such comments are not published but the text is made available to the interested parties.

A. Benin

8. Information concerning Benin has not yet been supplied to the Committee.

9. The following relevant Conventions have been ratified and are in force for Benin (for full names see the list of Conventions in Part I above): 6, 11, 13, 14, 18, 26, 29, 87, 98, 100, 105, 111, 143 and 161. In 2001 Benin has ratified Conventions Nos. 81, 135, 138 and 182.

Article 6

10. In its 2001 observation on Convention No. 105, the Committee recalled the provisions of Act No. 60-12 of 30 June 1962 on the freedom of the press which provides for imprisonment involving compulsory labour for various acts or activities related to the exercise of the right of expression. The Committee had previously referred in this connection to the following provisions: section 8 (deposit of a publication with the authorities before its circulation to the public); section 12 (allowing a ban on publications of foreign origin in French or in the vernacular printed in or outside the country); section 20 (incitement to commit an act classified as an offence); section 23 (causing offence to the

Prime Minister); section 25 (publishing false reports); and sections 26 and 27 (slander and insults). The Committee had expressed the hope that the new Act on freedom of information, to which the Government had referred in its report, would be adopted promptly and would guarantee that no term of imprisonment involving compulsory labour could be imposed as a penalty for activities related to the exercise of the right of expression.

11. In this context, the Committee had noted the adoption of Act No. 97-010 of 20 August 1997, liberalizing audiovisual communications and establishing special penal provisions relating to offences in the area of the press and audiovisual communications, provided by the Government, and the Government's indication that the new Act did not repeal Act No. 60-12, but that in the event of conflicting provisions, those of Act No. 97-010 prevail. The Committee had observed that the provisions of the new Act did not eliminate the divergences between the national legislation and the Convention, since the scope of the new Act covered audiovisual communications but not "printing, sales of books and periodicals", which fall within the scope of Act No. 60-12 of 30 June 1960. The Committee had regretted that some provisions of the new Act were similar to those of Act No. 60-12. It noted that, under section 79 of Act No. 97-010, "any seditious shouts or chants against the lawfully established authorities in public places or meetings" are punishable by a sentence of imprisonment of from six months to two years, and that causing offence to the President of the Republic is punishable by imprisonment of from one to five years, under section 81; section 80 punishes by imprisonment of from two to five years any provocation of the public security forces aimed at distracting them from their duty of defending security and obeying the orders given by their chiefs for the enforcement of military laws and regulations. Section 67 of Decree No. 73-293 of 15 December 1973 establishing the prison regulations allows convicts to be assigned to social rehabilitation work. The Committee had asked the Government to take the necessary steps to ensure observance of the Convention and to provide all relevant information on the application in practice of the above-mentioned provisions of Acts Nos. 60-12 and 97-010, together with copies of any court decisions clarifying their scope.

12. The Committee noted that in its latest report the Government indicated that, in the second phase of the ILO's programme to support implementation of fundamental principles and rights at work, the texts to apply the fundamental Conventions, including Convention No. 105, are to be compiled and edited, and that the Committee's observations will be studied in this context with a view to harmonizing domestic law with the provisions of the Convention. The Committee hoped that the Government would be in a position to provide information in its next report on the measures taken to ensure that national law and practice are brought into line with the Convention.

13. In addition, the Committee recalled that under sections 215, 235 and 238 of the Merchant Shipping Code of 1968, certain breaches of discipline by seafarers were punishable by imprisonment involving compulsory labour. In its last report the Government stated that the draft Merchant Shipping Code had not yet been adopted. The Committee hoped that the new Code will ensure application of the Convention in this respect and asked the Government to provide a copy of it as soon as it is enacted.

14. The Committee also noted the comments on the application of the Convention made by the Confederation of Autonomous Trade Unions of Benin, dated 31 May 2000, which were forwarded by the Government. The trade union organizations stated that the requisition procedure, as set out in Ordinance No. 69-14, constitutes forced labour and that the provisions of this Ordinance are in breach of international and constitutional provisions concerning the right to strike. In its observations on the application of the Forced Labour Convention, 1930 (No. 29), the Committee had referred for many years

to the provisions of the above-mentioned Ordinance, which allow workers on strike to be requisitioned under penalty of imprisonment. The Committee noted with interest that, according to the Government's statement in its reports on Conventions Nos. 29 and 105, an Act on the exercise of the right to strike had just been adopted and would be promulgated by the President of the Republic very shortly. The new Act repeals all the provisions of Ordinance No. 69-14/MFPRAT of 19 June 1969.

15. In its 1999 observation on Convention No. 111, the Committee noted with interest that, under sections 4 and 5 of the Labour Code of 27 January 1998, employers are prohibited from taking into account the sex, age, race, ethnic origin or descent of workers (section 4), or the social origin, membership or non-membership in a trade union, trade union activity, origin or opinions, in particular religious and political opinions, of workers (section 5), in making decisions regarding recruitment and other labour conditions, including vocational training, career development, promotion, remuneration, provision of social benefits, or termination of the employment contract. It also noted that section 31 of the Code establishes that handicapped persons must not be subjected to discrimination in respect of employment. With reference to article 1, paragraph 1 (b), of the Convention, the Committee asked the Government whether it intends to add the criteria of age and disability to the prohibited forms of discrimination covered by the Convention in Benin. A report by the Government on Convention No. 111 has been received and will be examined by the Committee of Experts at its November-December 2002 session.

Article 7

Equal remuneration

16. In its 2000 direct request on Convention No. 100, the Committee noted the rise in the minimum inter-occupational guaranteed wage (SMIG), under the terms of Decree No. 2000-162 of 29 March 2000. It asked the Government to provide information on the workers who receive the minimum wage, the sectors in which they are employed and the proportion of men and women among these workers. The Committee also noted that the statistics on the distribution of men and women in the public service show identical rates to those provided in the previous report, namely between 26 and 27 per cent of women and between 73 and 74 per cent of men. The Committee noted the Government's statement that schooling for girls had been made free of charge in rural areas as a means of promoting their access to education and training. The Committee asked the Government to provide information on any other specific measures which have been taken or are envisaged to promote the access of women to all categories of jobs in the public service and in the private sector, as well as to jobs in branches of activity where their numbers are low.

Article 8 of the Covenant

17. In its 2000 observation on Convention No. 87, the Committee noted that under the 1998 Labour Code there is an obligation to deposit trade union statutes with the competent authorities, including the Ministry of the Interior, in order to obtain legal recognition, under penalty of a fine. The Committee reiterated that this obligation was more than a simple condition of public announcement and that the fine imposable can be CFAF 700 in recurrent cases, which could constitute a severe obstacle to the creation of a trade union. In this connection, the Committee recalled that under the terms of article 2 of the Convention workers and employers should have the right to establish organizations of their own

chc osing without previous authorization. The Committee therefore invited the Government to take the measures necessary to remove the requirement to deposit the statutes with the Ministry of the Interior on penalty of financial sanctions and thus bring the legislation into conformity with the Convention.

18. In the same observation, the Committee noted that section 2 of the Labour Code excludes seafarers from its application and stipulates that they are covered by the 1968 Merchant Marine Code. Noting that the Merchant Marine Code (Ordinance No. 38 PR/MTPTPT of June 1968) does not grant seafarers either the right to organize or the right to strike, which is an intrinsic corollary of trade union rights, and provides for sentences of imprisonment for breaches of labour discipline (sections 209, 211 and 215), the Committee again requested the Government to ensure that seafarers benefit from the guarantees of the Convention and to keep it informed of measures taken in this respect.

19. The Committee also recalled the need to amend section 8 of Ordinance No. 69-14 PR/MFPTRA of June 1969 concerning the exercise of the right to strike which allows prohibition of strikes in the private and public service where interruption of the service would harm the economy and the higher interests of the nation. It noted with interest that, under the terms of sections 1, 2 and 13 of the Bill concerning the exercise of the right to strike, civil servants, like other workers, have the right to strike and bargain collectively. The Committee noted that the Bill in question constitutes a step towards the application of the Convention with regard to the minimum service to be maintained in the event that a strike in strategic sectors would endanger the health or the safety of the whole or part of the population and provides for the repeal of Ordinance No. 69-14 PR/MFPTRA. The Committee noted that examination of this draft had been placed on the agenda of the May/June 2000 session of the National Assembly and hoped that it would be rapidly promulgated. However, it requested the Government to eliminate the obligation of employees and their organizations to indicate in the notice to the authorities required under section 7 of the Bill, the length of the strike. The Committee considered that this requirement amounts to restricting the right of workers' organizations to organize their administration and activities and to formulate their programmes.

20. The Committee of Experts furthermore addressed direct requests to the Government in 1998 on Convention No. 26, in 1999 on Convention No. 111, in 2000 on Convention No. 87, and in 2001 on Conventions Nos. 6, 13, 29, and 143.

B. Czech Republic

21. No information concerning the Czech Republic has been supplied to the Committee previously.

22. The following relevant Conventions have been ratified and are in force for the Czech Republic: 1, 5, 10, 11, 12, 13, 14, 17, 18, 19, 26, 27, 29, 37, 38, 39, 42, 77, 78, 87, 88, 90, 98, 99, 100, 102, 105, 111, 115, 120, 122, 123, 124, 130, 132, 135, 136, 140, 142, 148, 155, 159, 161, 167, 171 and 182.

Article 6

23. In its 2000 direct request on Convention No. 29 the Committee, once again, has noted that the contract on the basis of which the prisoner's work for private employers is to be performed has to be concluded between the prison administration and the third party concerned and that employers are bound by the same obligations in respect of the prisoner's health and safety as those which regulate

normal employment relationships. The Committee recalled that prisoners must not be hired to or placed at the disposal of private parties. It further considered that voluntary consent by the prisoner to working for a private employer is a necessary condition for such employment to be compatible with the explicit provision of *article 2, paragraph 2 (c)*. Also, the work must be performed in conditions which guarantee payment of normal wages and social security, etc. The Committee asked the Government to indicate how and when the person concerned is giving that free consent, and to give details on the guarantees and safeguards established in law and practice.

24. In its 2001 observation on Convention No. 111 the Committee took note of the detailed information contained in the Government's report concerning the application of Act No. 451 of 1991 (Screening Act) laying down certain political prerequisites for holding a range of jobs and occupations mainly in public institutions but also in the private sector. This Act had been the subject of representations under article 24 of the ILO Constitution on two separate occasions (November 1991 and June 1994). In the decisions of these Governing Body committees, the Government had been invited to repeal or modify the provisions in the Screening Act that were incompatible with the Convention. In this regard, the Committee recalled that the level of a certain post within a public or private organization might not be determinative as to whether political criteria can be applied in filling it and that what was required was a careful and objective consideration of the inherent requirements of a job on a case-by-case basis. It also recalled that the exclusions imposed on persons for past activities should be proportional to the inherent requirements of a particular job. The Committee noted that the Government had reiterated its intention not to extend the validity of the Act beyond 31 December 2000. It further noted that new legislation concerning the status of employees in the State administration is under preparation. The Committee requested the Government to confirm that the Screening Act had not been extended and it hoped that the new legislation envisaged would not contain provisions incompatible with the Convention.

25. The Committee noted with interest that Act No. 167/1999 amended Act No. 1/1991 on employment, and that a new section 1 had been introduced, which stipulates as prohibited grounds of discrimination in employment, race, colour, sex, sexual orientation, language, creed and religion, political and other opinion, membership and/or activities in political parties or political movements, national extraction, health condition, age, marital or family status or family responsibilities, except in cases where the law so provides or where there is a valid ground, vital for the performance of the job, inherent in prerequisites, requirements and nature of the job to be performed by the citizen concerned. The Government indicated that by moving the prohibition of discrimination from the preamble to section 1, it would be easier to enforce these provisions and to impose penalties in cases of its violation by employers. The Committee trusted that the Government would indicate the measures taken to ensure its application in practice, including statistical data of cases involving discrimination in employment and occupation.

26. The Committee also noted that new institutions had been created including a Council for Human Rights, with a section for combating racism, and an Inter-ministerial Commission for Romany Affairs. The Committee took note of the information supplied by the Government that a significant change in the State employment policy has taken place with the adoption of the National Employment Plan in May 1999, which will improve chances of job applicants belonging to vulnerable groups, including Roma job applicants. The Government indicated that it has taken a series of measures on the basis of this Plan, including employment promotion among the long-term unemployed, with emphasis on members of the Roma community and strengthening of legal and institutional tools and machinery

designed to combat discriminatory practices in the labour market. The Committee also noted that a special committee had been established in 1998 within the Ministry of Labour and Social Affairs to deal specifically with the problems of the Roma community and to improve their situation in the labour market.

27. The Committee stressed that the elimination of discrimination in employment and occupation, on all grounds, including national extraction, is critical to sustainable development, all the more so because of the re-emergence of signs of intolerance and racism in some countries. The Committee urged the Government to take measures to improve significantly the Roma's access to training, education on the same basis as others, as well as to employment and occupation, and to take steps to raise public awareness of the issue of racism in order to promote tolerance, respect and understanding between the Roma community and others in society. It hoped the Government would be able to report progress in positively addressing the serious problems facing Romas in the labour market and in society in general.

28. With reference to its previous comments concerning Act No. 216 of 10 July 1993, which amended the 1990 Higher Education Act, and required the holding of competitions for all jobs of higher education teachers, scientific workers and managers of educational and scientific higher education establishments, the Committee noted from the Government's report that this Act has been abolished and replaced by a new Act on higher education. The Committee however noted that the new Act, under section 77, provides that positions of teachers in public institutions of higher education are to be filled by competition. The Committee asked the Government to indicate whether the new competition procedure has eliminated political opinion as an element to consider in the selection of candidates.

29. Further to previous comments, the Committee requested the Government to provide information on the practical impact of the measures taken to promote equality between women and men in employment and occupation and to raise awareness of girls and young women about employment and training opportunities available to them beyond those considered "typically female" occupations.

30. The 2000 direct request on the Employment Policy Convention, 1964 (No. 122) - in absence of a report by the Government - repeated previous requests. The Government had stated that, following a period of relative stability, the rate of unemployment increased from 3.5 per cent to 4.3 per cent in 1997 owing to a marked slow-down in economic growth at the end of the period. According to the latest OECD forecasts, the unemployment rate would rise to 5.8 per cent in 1998. The Committee nevertheless had noted that, despite this recent deterioration, the employment situation continues to compare favourably with that of other European countries which are in a period of transition to a market economy and with the majority of Western European countries. The Government had emphasized that unemployment particularly affects certain groups of the economically active population, such as unskilled workers, young people with no work experience, the Roma ethnic minority and persons with disabilities. Moreover, levels of unemployment are highest in the regions of North Bohemia and North Moravia, which are undergoing industrial restructuring, and in mainly agricultural areas. The Government had stated that, in order to stem this rise in structural unemployment, it has adjusted its employment policy to strengthen measures targeting the most vulnerable regions and groups of workers. Emphasis is placed, in particular, on the development of infrastructure in the transport and service industries and the promotion of small- and medium-sized enterprises as sources of new employment opportunities, as well as on retraining, not only for jobseekers, but also as a preventative measure for workers whose jobs are at risk as a consequence of structural changes. The Committee had noted in this

respect that refocusing of active labour market policy measures appears to have resulted in a decrease in the number of beneficiaries during the period in question. The Committee invited the Government to provide in its next report any evaluation of the effectiveness of these measures in terms of placing those concerned in employment.

Article 7

Equal remuneration

31. In its 2001 observation on Convention No. 100, the Committee noted with interest that the Labour Code of 1965 was substantially amended in 2000 in order to bring it into conformity with the relevant European Union legislation and the Convention. Section 1 of the Labour Code prohibits discrimination against employees on the ground of sex, inter alia, and establishes that all employers shall ensure equal treatment of all employees as regards their working conditions, including pay and other considerations (emoluments) in cash or kind for their work.

32. The Committee also noted that Act No. 1/1992 on wages, remuneration for stand-by and average earnings, which governed remuneration in all spheres except for wages in "budgetary organizations" (i.e. organizations financed from the State budget), has been amended by Act No. 217/2000. Act No. 217/2000 also amends Act No. 143/1992 on pay, remuneration for stand-by in budgetary and certain other organizations and bodies. The Committee noted that this Act requires the payment of equal remuneration for men and women for work of equal value and that a job classification system will be used for determining the wages based on the same criteria for both men and women. The Committee also noted that the principle of equal pay is extended to all components of remuneration.

33. The Committee noted with interest the classifications provided in the law as to how work of the same or equal value is to be determined, and that the Act sets out the objective criteria to be used to appraise the same or comparable difficulty, responsibility, exertion, working conditions, work capacity and work performance of the employee.

Safe and healthy working conditions

34. In its 2000 observation on the Occupational Health and Safety Convention, 1981 (No. 155) the Committee noted with interest the Government's reply to its previous comments referring to earlier observations made by the Czech-Moravian Chamber of Trade Unions (CMKOS) essentially relating to the required measures for the formulation, implementation and periodic review of a coherent national policy on occupational safety, occupational health and the working environment. The Government indicated in its reply that the amendment to the Labour Code would probably enter into force on 1 January 2001, and that a copy would be sent to the Office when it is approved. It indicated that the amendments change in important ways the parts concerning safety and health at work.

35. The Committee noted with interest the information that the Czech Office for Safety at Work, an institution founded by the Ministry of Labour and Social Affairs, is currently working on the draft law on labour inspection. It also noted with interest the information that one of the priorities covered by the Ministry of Labour and Social Affairs strategy plan up to 2002 is safety and health at work. The Government's report indicated that in order to ensure the protection and improvement of the working environment it is vital to develop and implement a national plan.

Article 8

36. In its 2001 observation on Convention No. 11, the Committee recalled that paragraph 2 of Law No. 83 of 1990 as amended by Law No. 300 of 19 July 1990, guaranteed the right of association to all citizens, and that it had requested the Government to indicate if foreign agricultural workers legally residing in the country were also granted trade union rights. The Government indicated in its report that article 27 of the Charter of fundamental rights and freedoms (Constitutional Act No. 23/1991) provides that every person has the right to associate freely with others for the protection of their economic and social interests. Article 42, subsection 3 of the Charter states that the use of the term "citizen" in legislative provisions concerning fundamental rights and freedoms granted by the Charter applies to all persons, regardless of their citizenship. The Government indicated that as a constitutional act, the Charter has superiority over ordinary provisions, including Act No. 83/1990, which has become obsolete in its use of the term "citizen". In practice there had been no cases where the right to organize was denied on grounds of foreign nationality, as foreign workers are granted trade union rights. The Government also indicated that it had prepared a draft act on association ensuring the right to organize to all persons, which was, however, rejected by Parliament. The Committee noted with interest the Government's efforts to amend Act No. 83/1990 to ensure that the right to organize applies to all persons. Given that according to the Government's report, the use of the term "citizen" in the Act represents no particular obstacle in respect of the trade union rights of agricultural workers, the Committee will continue to pursue this matter under Convention No. 87.

Article 9

37. In its 1998 direct request on the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 18) the Committee noted the information provided by the Government in its first report. It noted with interest that under section 66 of Act No. 155/1995 respecting pensions insurance, persons who do not reside in the Czech Republic may now obtain pension payments abroad.

38. In a 2000 direct request on the Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 43) the Committee noted the adoption of Decree No. 290/1995 establishing the schedule of occupational diseases. The Committee noted that the legislation gives a broad definition of the working environment at the origin of the occupational disease and, unlike the Convention, does not refer to trades, industries and processes. The Committee recalls in this connection that, by listing for each disease in the list the corresponding trades, industries and processes, the Convention seeks to release workers from the burden of proving that they have actually been exposed to the risk of the disease in question, which in some cases may be particularly difficult. In these circumstances, it asks the Government to provide detailed information on the application in practice of Decree No. 290/1995 and to indicate how this legislation enables effect to be given to the objectives pursued by the Convention, as recalled above.

39. The Committee of Experts furthermore addressed direct requests to the Government in 1998 on Conventions Nos. 5 and 120, in 1999 on Convention Nos. 1, 26, 99, in 2000 on Conventions Nos. 27, 130, 132 and 155, and in 2001 on Conventions Nos. 10, 17, 19, 77, 78, 87, 98, 100, 105, 124, 161 and 171.

C. Ireland

40. No information concerning Ireland has been supplied to the Committee previously.

41. The following relevant Conventions have been ratified and are in force for Ireland: 2, 6, 11, 12, 14, 16, 19, 26, 27, 29, 32, 44, 62, 73, 81, 87, 88, 96, 98, 99, 100, 102, 105, 111, 121, 122, 124, 132, 138, 142, 159, 177, 178 and 182.

Article 6

42. In its 2000 direct request on Convention No. 29 the Committee recalled observations made by the Scheme Workers Alliance (SWA) in communications dated 18 January, 14 May and 31 August 1999, as well as the observations made by the Amalgamated Transport and General Workers' Union in a communication dated 16 August 1999, concerning the application by Ireland of a number of ratified ILO Conventions, including Conventions Nos. 29 and 105. The unions provided detailed submissions expressing concern about the situation of the unemployed, the conditions under which payments are made under the Irish Employment Action Plan (EAP) and the limited availability of jobs, which were low paying and not necessarily suited to the skills and interest of the unemployed. The Government responded and denied breaches of Conventions Nos. 29 and 105, referring to developments in employment and labour market policy which were articulated in the EAP. The Government also referred to its commitment to implement the EU Employment Guidelines, as well as its preventative strategies concerning young unemployed.

43. In this regard, the Committee had come to the conclusion that the unions' allegations did not raise matters which fall within the scope of Convention No. 29. The problems of unemployment and the scarcity of work which may only be found in low-level positions so that persons perform work which they may not wish to do in order to maintain themselves, do not usually fall for consideration under the Convention. There have been occasions when such circumstances were considered to come under the Convention, such as cases where acquired rights under a contributory unemployment insurance scheme were subjected to new conditions bearing on the range of work to be accepted by benefit recipients; or where certain categories of welfare recipients, such as asylum-seekers, were denied by the authorities access to the general labour market, while being compelled to perform certain jobs under the menace of losing their only means of subsistence. In the present case, however, the issue appears to be rather one of general economic constraints.

44. The Committee, in this context, also recalled that the Governing Body committee set up to examine a representation concerning a comparable scheme in 1997, indicated the following: "In a case where an objective situation of economic constraint exists but has not been created by the Government, then only if the Government exploits such situation by offering an excessively low level of remuneration could it to some extent become answerable for a situation that it did not create. Moreover, it might be held responsible for organizing or exacerbating economic constraints if the number of people hired by the Government at excessively low rates of pay and the quantity of work done by such employees had a knock-on effect on the situation of other people, causing them to lose their normal jobs and face identical economic constraints." (GB.270/15/3, para. 30)

45. The observation of 1999 on Convention No. 105 noted with satisfaction that the Merchant Shipping (Miscellaneous Provisions) Act, 1998 (No. 20) had repealed section 225 of the Merchant Shipping Act, 1894, and amended section 221 of the same Act, which provided that certain disciplinary offences by seafarers were punishable with imprisonment (involving, under section 42 of the rules for the Government of Prisons, 1947, an obligation to work), and also repealed sections 222, 224 and 238 of the Merchant Shipping Act, under which seafarers absent without leave could be forcibly conveyed on board ship. The Committee noted the Government's indication in its report that the Rules for the Government of Prisons, 1947, had not yet been replaced by the proposed new rules, which are likely to be introduced in the first quarter of the year 2000.

Article 10

Protection of children and young persons in relation to employment and work

46. In its observation of 2000 on Convention No. 138, the Committee noted that the Government's report contains no reply to previous comments. It therefore repeated its previous observation, in which it had noted the adoption of the new Protection of Young Persons (Employment) Act, 1996. It had noted with interest that, under this Act, the minimum age for full-time work had been raised from 15 to 16 years of age.

47. In its direct request of 2000 on the same Convention the Committee hoped that the next report would include full information on the matters raised in its previous direct request. The Committee recalled that the Convention applies not only to work under an employment contract but to all types of work or employment. It also noted the Government's earlier indication concerning this point, that the Department of Labour had not been made aware of any specific cases arising with regard to persons working in a non-contractual nature. The Government also had stated that this point would be taken into consideration during the reviewing process of the Protection of Young Persons (Employment) Act. However, the new Act still does not cover self-employment. The Committee hoped that the Government would continue to indicate any further steps which may be taken to ensure the application of the minimum age to any type of work.

48. The Committee of Experts furthermore addressed direct requests to the Government in 1998 on Convention No. 26, in 1999 on Convention No. 121, in 2000 on Convention No. 159 and in 2001 on Conventions Nos. 16, 73, 81, 100, 122, 132 and 155.

D. United Kingdom

49. Information concerning the United Kingdom has been supplied previously to the Committee in 1978, 1981, 1985, 1991 and 1995.

50. The following relevant Conventions have been ratified and are in force for the United Kingdom (for full names see the list of Conventions in Part I above): 2, 11, 12, 16, 17, 19, 24, 25, 29, 32, 36, 37, 38, 39, 40, 42, 44, 81, 87, 98, 100, 102, 105, 111, 115, 120, 124, 135, 138, 140, 141, 142, 148, 151 and 182.

Article 6

51. In its 2001 observation on Convention No. 29, the Committee noted the Government's statement to the Conference Committee in 2000 that no prisoner in the United Kingdom - whether in a publicly run or privatized prison or workshop - was hired to, or placed at the disposal of, private individuals, companies or associations. The Government explained that while private sector companies might supervise the work on a day-to-day basis, the prisoner remained under the ultimate care and control of prison service officials; wages were paid to prisoners by the prison and not by the private company providing the work; and the Government considered that its present policies for the employment of prisoners conformed with the requirements of the Convention and were in the best interests of prisoners. These views were repeated in the Government's latest report on the Convention and rejected by the Trade Union Congress (TUC) in its co. ments on that report. With regard to the notions of "hiring to" and "placing at the disposal of" and their relationship with "public supervision and control" and the flow of payments among the various parties involved, the Committee referred to the explanations given in paragraphs 96 and 118-127 of its general report to the International Labour Conference in 2001 and in points 6 and 7 of its general observation on the Convention this year, confirming the concl sion that the exception from the scope of the Convention provided for in article 2 (2) (c) of the Convention for compulsory prison labour does not extend to privatized prisons and prison workshops - even under public supervision and control.

52. In its previous comments the Committee had recalled that, to be compatible with the Convention, work of prisoners for private companies .hus must depend on the freely given consent of the workers concerned. This requires, inter alia, the absence of any menace of a penalty or duress such as making work an element in assessing behaviour for the purposes of reduction of sentence. Moreover, in the context of a captive labour force having no alternative access to the free labour market, "free" consent to a form of employment going prima facie against the letter of the Convention needs to be authenticated by arm's length conditions of employment approximating a free labour relationship, such as the existence of a labour contract between the prisoner and the private company using his or her labour and free labour market-oriented conditions regarding wage levels, social security and safety and health.

53. The Committee had previously noted with interest the Government's indication in its 1999 report that there are a number of prisons which allow the release, on a daily basis, of prisoners in the last six months of their sentence to enable them to work. These prisoners are normally employed within a free labour relationship as a part of their rehabilitation and resettlement back into society. Prisoners who do work out are subject to normal requirements in respect of income tax and national insurance contributions from the wages they receive for their work. However, it should be noted that prisoners who work outside are released on temporary facility licence (under rule 9 (3) (b) of the Prison Rules, 1999) with the main or primary purpose of allowing them to undertake work for outside employers, and are working "in pursuance of prison rules". They are therefore excluded from the national minimum wage by virtue of section 45 of the National Minimum Wage Act, 1998. It is, nevertheless, prison service policy that such arrangements must not give an unfair competitive advantage to those who employ prisoners, and employers must not treat prisoners less favourably than other workers in comparable employment. It is expected, therefore, that prisoners who work for outside employers, doing a normal job, will be paid the appropriate rate for the job.

54. The Committee had hoped that prisoners who were thus released on a daily basis to work for outside employers, doing a normal job "within a free labour relationship", would benefit from general labour legislation, and that in view also of prison service policy regarding the payment of normal wages, the anomaly of their exclusion from the National Minimum Wage Act, 1998, would be resolved. The Government explained in its latest report that "prisoners are not covered by the National Minimum Wage Act because they do not constitute a 'worker' as defined by section 53 (3) of that Act in that they do not have a contract of employment or a contract for personal work or services". The Committee noted these explanations but recalled that it is precisely on these points that a change in law and practice appears desirable and feasible for outside employment in the light of the Government's indications in its 1999 report. Prisoners "employed within a free labour relationship" ought to have a contract of employment with the private enterprise using their services and labour legislation, including the minimum wage legislation, should be made applicable to such employment. The Committee hoped that measures would be taken to introduce the corresponding changes in law and practice.

55. In its report, the Government further stated that another relevant factor is that prisoners' accommodation, clothing, meals, etc., are provided by the prison service, without any costs to the prisoner. It was therefore likely that a prisoner undertaking outside employment and benefiting from the national minimum wage would, in practice, be at an advantage to a person outside prison doing the same work for the same wages, who would be expected to pay for his or her own accommodation, clothing and meals. Commenting on this, the TUC expressed surprise that the Government had failed to mention the Prisoner's Earnings Act, 1996, which addressed the matter of prisoners earning "enhanced wages" for work which is not "directed work" in pursuance of prison rules, and provides, inter alia, for deductions for such costs, for income tax and national insurance deductions, for attachments to earnings to support the prisoner's family or for victim support, and for savings to be used on release to aid social reintegration. Section 1 (3) of the Act specifically alludes to earnings paid otherwise than by the prison governor on behalf of the Secretary of State. In this connection, the Committee referred to paragraph 142 of its general report to the International Labour Conference in 2001, where it recalled that in the free labour market wages may, in the words of articles 8 and 10 of the Protection of Wages Convention, 1949 (No. 95), be subject to "deductions" and "be attached or assigned" under conditions and within limits prescribed by national laws or regulations. For prisoners employed by private enterprises, this implies that their wages may also be subject to deductions for board and lodging provided and "be attached or assigned" so as to satisfy compensation claims of victims as well as alimony or other obligations of the prisoners, both of which would be illusory if exploitative wage rates prevailed.

56. The Committee once more noted with regret that the necessary measures to ensure that any work by prisoners for private companies be performed under the conditions of a freely consented upon employment relationship and to a certain extent implemented in "outside employment" of prisoners with private employers - have so far not been taken with regard to prisoners working in contracted-out prisons and prison industries.

57. In its report the Government indicated, with regard to the work performed in contracted-out prisons or workshops in the United Kingdom, that all prisoners, whether they are in a public or privatized prison, and whatever work they may be involved in, remain under the ultimate supervision of the State in the United Kingdom. The Government also continued to be of the view that no prisoner is "hired" to a private company. Private companies do not pay the Prison Service to provide it with labour. Nor are prisoners placed "at the disposal" of a private company. Such a term implies private companies

being allowed to use prisoners for whatever purposes they wish, whereas the work that prisoners perform in contracted-out prisons or prison industries in the United Kingdom was specific and was comparable with that done by prisoners in public prisons, with the same audit baselines monitored by public authority. As regards "ultimate supervision" and "audit baselines" monitored by public authority, the TUC in its comments expressed the view that "ultimate supervision" did not amount to day-to-day supervision, which in contracted-out prisons was performed by employees of private companies and would not meet the requirements of the Convention. In this regard, the Committee, referring also to paragraphs 119 and 120 of its general report of last year, recalled that even where prisoners remain at all times under the supervision and control of a public authority, this does not in itself dispense the Government from fulfilling the other condition in article 2 (2) (c), namely that the person is not hired to or placed at the disposal of private individuals, companies or associations.

58. In its 2001 observation on Convention No. 105, the Committee recalled its comments on section 59 (1) of the Merchant Shipping Act, 1995 which provides that a seafarer who combines with other seafarers employed on the same ship at a time while the ship is at sea to disobey lawful commands, neglect any duty which is required to be discharged, or impede the progress of a voyage or the navigation of the ship, is liable, on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both. According to section 59 (2), a ship is treated as being at sea at any time when it is not securely moored in a safe berth. The Government stated in its 1997 report that section 59 is applicable to seafarers who withdraw their labour in furtherance of an industrial dispute. The Committee had noted from the Government's 1999 report that consultations took place with the shipping industry on whether or not section 59 should be repealed or amended so that it applied only to mutinies but not strikes, and it had been concluded that other parts of the Act and other legislation existed to deal effectively with actions arising from mutinies, if section 59 was repealed. The Government indicated in its latest report that, following consultation with the United Kingdom shipping industry, further negotiations were undertaken with some respondents to ascertain whether a compromise solution could be reached that would address concerns expressed. The Committee noted with interest that, as a result of these consultations, the decision was taken to seek to amend section 59, so that it is linked to actions which are not only committed while a ship is at sea, but also cause or could have caused loss or destruction of, or serious damage to, any ship or the death of or serious injury to any person (subsection (2) (i), (ii) and (iii) of the draft amendment to section 59). The Committee noted that the Government considers it necessary to undertake further consultation with the shipping industry. Noting also the Government's statement in the report that the amendment of section 59, as a part of United Kingdom primary legislation, requires the approval of Parliament, the Committee hoped that the proposed amendment would be adopted so as to bring the merchant shipping legislation into conformity with the Convention.

Article 7

Equal remuneration

59. In its 2001 observation on Convention No. 100, the Committee noted from the statistical information provided by the Government that in 1999 women's average hourly earnings (excluding overtime) amounted to 80.9 per cent of men's earnings in Great Britain, an increase of only 0.9 per cent from 1998, while women's average hourly earnings (excluding overtime) in Northern Ireland increased by 2.6 per cent to 86.9 per cent in 1999 compared with 1998. The Committee further noted from the Northern Ireland New Earnings Survey, April 1998 and 1999 that, among managers and administrators in

Northern Ireland, women workers earned 34.61 per cent less than men in 1998. In comparison, in 1999, women workers earned 34.14 per cent less than men. Among the professional categories women workers earned 13.96 per cent less than men in 1998 but this gap fell to 10.75 per cent in 1999.

60. The Committee noted the Government's statement that it intends to introduce changes to employment tribunal procedures to simplify and speed up equal pay claims. It noted that the Trades Union Congress (TUC) welcomed the Government's plans to change the tribunal procedures, but that it is of the opinion that these measures would not be enough to address the gender pay gap between men and women workers, stating that consideration should be given to placing a statutory duty on employers to review pay systems and pay structures and to publish the results, a concept which it has elaborated in its response to the EOC publication Equality in the 21st Century.

61. The Committee noted the adoption of a statutory minimum wage on 1 January 1999 by means of the National Minimum Wage Act 1998 and the National Minimum Wage Regulations 1999 (amended in 2000). It noted that the Act contains several sections dealing with enforcement and that promotional measures have been taken by the Government, such as publicizing the minimum wage, issuing guides and awareness-raising campaigns. The Committee noted with interest the Government's statement that, through the introduction of the minimum wage, an estimated 1.5 million workers have become entitled to higher pay and that about two-thirds of them are women workers.

62. With regard to the National Insurance Lower Earnings Limit (LEL), the Committee noted the Government's statement that the introduction of the national minimum wage has no direct implication for the LEL. The Committee noted the introduction of the primary threshold in April 2000 (£76 per week for 2000/01) as the wage level at which national insurance contributions are to be paid. It also noted that the introduction of the minimum wage has resulted in a worker who works just over 18 hours earning more that the LEL and that this measure, combined with the introduction of the primary threshold, results in those workers earning between the LEL and the primary threshold being treated as if they are paying contributions on their earnings to protect their benefit position. The Committee asked the Government to continue to provide information respecting the LEL and the primary threshold and their effects on the application of the principle of equal pay for work of equal value. The Committee noted the statistical information provided by the Government in the Labour Force Survey, Winter 1999, which shows that of all part-time workers 83.29 per cent were women, and that of all part-time workers, 54.77 per cent women part-time workers earned £66 per week or less, while 9.5 per cent of male workers earned this level of wages. In this respect, the Committee noted that section 19 of the Employment Relations Act, 1999, provides that regulations shall be issued to ensure that part-time workers are not treated less favourably than persons in full-time employment, and that section 20 envisages that codes of practice may be issued. The Committee understood that regulations had now been brought into force and requested that information be provided on their content and impact. The Committee reiterated the importance of tackling any indirect discrimination against part-time workers, the majority of whom are women.

Safe and healthy working conditions

63. In its 2001 observation on Convention No. 81, the Committee noted with interest the annual Department of Trade and Industry (DTI) report for 1999-2000 concerning monitoring of the 1999 regulations establishing for the first time a national minimum wage. Noting that a permit-based system had been established with regard to the employment of children below the

compulsory school-leaving age, that the employment of children in factories and on construction sites is prohibited and that there are additional specific regulations concerning the risks of exposure to ionizing radiations and hazardous substances in particular, the Committee asked the Government to indicate what steps had been taken to ensure that labour inspectors and other officials can effectively seek out and take action against hidden cases of illegal child labour.

64. In its 2001 observation on Convention No. 115, the Committee noted with interest the adoption of the Ionising Radiations Regulations No. 3232 of 1999 (IRR 99), which replace the Ionising Radiations Regulations of 1985, except for the regulation 26 on special hazard assessments. It further noted with interest the code of practice designed to give guidance on the above Regulations, which has been approved by the Safety and Health Commission (HSC) with the consent of the Minister of State for the Environment, Transport and the Regions and came into force on 1 January 2000. In this respect, the Government indicated that the Approved Code of Practice (ACOP) had a special legal status and may be relied upon in a court of law. With regard to regulations on work with ionizing radiation in Northern Ireland, the Committee noted the Government's indication that regulations equivalent to the Ionising Radiations Regulations No. 3232 of 1999 were presently in preparation. The Committee hoped that the revision of the Regulations on Ionizing Radiations 273/1985 (Northern Ireland) would be accomplished in the near future in order to guarantee equivalent levels of protection in the whole country.

65. The Committee noted that, by virtue of Regulation 19, paragraph 2 (c) of the IRR 99, in conjunction with its paragraph 3, young persons below the age of 18 years are precluded from employment for work involving harmful exposure to radiation, except where it is: (i) necessary for training; (ii) the young person will be supervised by a competent person; and (iii) any risk will be reduced to the lowest level that is reasonable and practicable. It further noted that Regulation 11, paragraph 1 of the IRR 99, in conjunction with paragraph 3, of Schedule 4, Part I, to Regulation 11, fixes the dose limits of exposure to ionizing radiations for trainees aged under 18 years at 6 mSv per year. However, with regard to possible exposure to ionizing radiations, the Committee recalled that article 7 of the Convention distinguishes between young persons under the age of 18 years (article 7, paragraph 1 (b)) and workers under the age of 16 (article 7, paragraph 2). According to article 7, paragraph 1 (b), of the Convention read in the light of the explanations given in paragraphs 4.1.5 and 4.3.1 (b) of the ILO code of practice on radiation protection of workers (ionizing radiation), the dose limit of exposure to ionizing radiations for young persons under 18 years of age is three tenths of the dose limits established for radiation workers, thus 6 mSv per year. While article 7, paragraph 2, of the Convention provides for a general interdiction to engage young persons under the age of 16 in work involving exposure to ionizing radiations, the above dose limit applies only to young persons between the age of 16 and 18. In its report, the Government believed that the protection provided by IRR 99 and MHSWR 99 is sufficient to provide adequate protection for young persons under the age of 16. The Government however recognized that the actual legislation in force did not provide a complete interdiction to engage workers under the age of 16 in work involving ionizing radiations as required by the Convention. The Government would therefore reconsider its position and consult with the social partners on the question of a general interdiction. The Committee, taking due note of this information, urged the Government to take appropriate action, in consultation with the social partners, towards the incorporation of a general interdiction to engage workers under the age of 16 in radiation work into national legislation, in conformity with this article of the Convention.

Article 8

66. In an observation of 2000 on Convention No. 87, the Committee noted information provided in the Government's report, as well as the observations made by the TUC and the mainly public sector trade union UNISON. The Committee first noted with interest the introduction in 1999 of the Employment Relations Act (ERA) which will amend a certain number of provisions of the 1992 Trade Union and Labour Relations (Consolidation) Act upon which the Committee had been commenting for a number of years. In particular, the Committee noted with satisfaction the abolition of the Commissioner for the Rights of Trade Union Members (CRTUM) and of the Commissioner for Protection Against Unlawful Industrial Action (CPAUIA) under section 28 of the ERA which came into force on 25 October 1999. The Committee further noted from section 4 and Schedule 3 of the 1999 Act that the purpose of ballot notice had now been restricted to providing information to help the employer to make plans and bring information to the attention of those of his or her employees concerned, and that it is specifically provided that unions are not required to name the employees concerned when giving ballot notice. Furthermore, the Committee noted with interest the indication in the Government's report that a revised Code of Practice on Industrial Action Ballots and Notice to Employers had been issued for consultation in April 2000 reflecting these changes and that the revised Code and the relevant parts of the 1999 Act were expected to come into force on 18 September 2000.

67. The Committee recalled that its previous comments concerned sections 64-67 of the 1992 Act which prevented trade unions from disciplining their members who refused to participate in lawful strikes and other industrial action or who sought to persuade fellow members to refuse to participate in such action. The Committee once again noted that unions should have the right to draw up their rules and to formulate their programmes without the interference of the public authorities which should restrict or impede the exercise of freedom of association and so to determine whether or not it should be possible to discipline members who refuse to comply with democratic decisions to take lawful industrial action. It requested the Government to continue to keep it informed of any developments in respect of these provisions.

68. The Committee also recalled that its previous comments regarding the absence of immunities in respect of civil liability when undertaking sympathy strikes. It noted the Government's indication that no changes had been made in this respect. The Committee once again noted that workers should be able to take industrial action in relation to matters which affect them even though, in certain cases, the direct employer may not be party to the dispute. The Committee reiterated that workers should be able to participate in sympathy strikes provided the initial strike they are supporting is itself lawful.

69. In its 2001 observations on Convention No. 98, the Committee recalled its concerns with respect to insufficient protection for workers against anti-union discrimination, with such lack of protection having harmful implications concerning the promotion of collective bargaining. The Committee had in particular requested the Government to review and further amend section 146 of the Trade Union and Labour Relations (Consolidation) Act, 1992 (TULRA), and section 13 of the Trade Union Reform and Employment Rights Act, 1993 (TURER) (amending section 148 of TULRA).

70. The Committee had previously noted with interest that section 146 (l) (a) of the TULRA had been amended by virtue of the Employment Relations Act, 1999, thus making it unlawful to subject an employee to detriment short of dismissal by omission, and not only in cases of a positive action, due to trade union membership or activities. The Committee noted the Government's statement that prior to

this amendment, discrimination by omission on the grounds of trade union membership was not prohibited. The Committee noted, however, that the amendment did not address the judicial interpretation whereby the protection of discrimination on the basis of trade union membership under section 146 (l) (a) was found not to include protection for making use of the essential services of the union (e.g. collective bargaining). The Committee therefore once again requested the Government to indicate in its next report any steps taken to review and further amend section 146 of TULRA.

71. With respect to TURER, section 13, the Committee had previously noted that this provision provided for protection against action short of dismissal on grounds related to union membership or activities. The Committee had noted, however, that the provision allowed an employer wilfully to discriminate on anti-union grounds, as long as another purpose was to further a change in the relationship with all or any class of employees and had considered that such a provision could be considered as tantamount to condoning anti-union discrimination. The Government indicated that it is of the opinion that, in the United Kingdom's long standing "voluntarist" system of industrial relations, employers should be free to seek to change their bargaining arrangements and the law allows them to do so. The Government added that section 17 of the Employment Relations Act contains provisions to deal with situations where employers coerce workers to opt out of agreements and provides protection against dismissal or detriment where workers refuse to opt out of a collective agreement, which applies to them. In this respect, first of all, the Committee recalled that the Government has an obligation under the Convention to provide for protection against anti-union discrimination and to promote collective bargaining; however, current legislation allows employers to offer financial inducements to employees to sign personal contracts even though they may be performing identical work as those who refuse to sign, thereby discriminating against the latter. Moreover, while the Employment Relations Act states that the Secretary of State may make regulations concerning cases where a worker is subjected to detriment by the employer or dismissed on the grounds that the worker refuses to enter into a contract that includes terms which differ from the terms of a collective agreement which apply to that worker, the Committee noted the Government's statement that no date for introducing such regulations had been set. In these circumstances, the Committee once again requested the Government to take steps to review and amend TURER, section 13.

Article 9

72. In its 2000 observation on the Workmen's Compensation (Accidents) Convention, 1925 (No. 17), the Committee of Experts recalled that under national legislation, firstly, victims of occupational injuries are not required to share in the costs of prescribed pharmaceutical products when they are in a hospital or when their revenues are beneath a certain limit and, secondly, many categories of insured persons are exempt from cost sharing in respect of pharmaceutical products, irrespective of their level of income. The Committee reminded the Government that any provision providing for a contribution by the victim of an occupational accident in the cost of prescribed pharmaceutical products is counter to article 9 of the Convention. The Committee reiterated that the Government, in order to ensure full implementation of the Convention, should include all victims of occupational accidents, irrespective of their income level, within the category of insured persons exempt from cost sharing such that pharmaceutical assistance dispensed outside hospital is provided free of charge to all victims of industrial accidents.

73. In its 2000 observation on the Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42), the Committee of Experts reiterated the need to supplement the list of prescribed occupational diseases so as to conform with the Convention in regard to poisoning by the halogen derivatives of hydrocarbons of the aliphatic series, disorders due to ionizing radiation and anthrax infection.

74. In its 2000 observation on the Unemployment Provision Convention, 1934 (No. 44), the Committee recalled that it had noted previously that the rule by which a person could be disqualified from receiving unemployment benefit for having refused "suitable employment" (a concept to which *article 10, paragraph 1,* of the Convention refers) was replaced by the apparently more restrictive concept of disqualifying a person for refusing employment notified by the employment service "without good cause", which was carried forward into the jobseekers' legislation (section 19 (6) (c) of the Jobseekers Act 1995). In view of the fact that unemployed persons are authorized during a limited period of 1-13 weeks to refuse to seek or accept any employment which does not correspond to their usual occupation and for which the level of remuneration is lower than they are accustomed to receiving (section 6 (5) of the Act and Regulation 16 of the Jobseeker's Allowance Regulations 1996), the Committee had expressed the hope that the Government would indicate the measures taken or contemplated to ensure that unemployment benefit is paid at least during the minimum period of 78 working days per year (13 weeks), in accordance with *articles 10 and 11* of the Convention.

75. Having examined the Government's most recent report, the Committee observed that, in relation to the notion of "suitable employment", the possibility, under the permitted period of up to 13 weeks provided for in Regulation 16 of the Jobseeker's Allowance Regulations 1996 for a jobseeker to restrict his availability for employment to his "usual occupation" with the same level of remuneration, ensures during this period a sufficient degree of protection to the person concerned. The criteria taken into consideration under Regulation 16 (2) in the determination by an adjudication officer of the duration of the permitted period are in line with those normally used in assessing the suitability of employment. Moreover, after the permitted period and until the expiration of six months from the date of claim, jobseekers may also restrict their availability for employment by placing restrictions in particular on the level of remuneration, provided they can show that they have reasonable prospects for securing employment notwithstanding those restrictions (Regulations 8 and 9). The Committee noted however that the decisions concerning the duration of the permitted period, as well as the employability of a jobseeker in the light of the restrictions made, are placed under the responsibility of adjudication officers, who thus have broad discretion. It requested information on whether any guidelines have been drawn up for the adjudication officers since the entry into force of the jobseekers' legislation on the above-mentioned matters (availability for employment).

76. The Committee of Experts furthermore addressed direct requests to the Government in 1999 on Conventions Nos. 142, 148 and 151, in 2000 on Conventions Nos. 42, 44 and 87, and in 2001 on Conventions Nos. 24, 29, 98, 122, 105, 115 and 124.

E. United Kingdom (Non-Metropolitan Territories)

77. Information concerning the Non-Metropolitan Territories of the United Kingdom has been supplied previously to the Committee in 1979, 1982, 1985 and 1996. The present report contains information concerning the following territories: Bermuda, British Virgin Islands, Falkland Islands (Malvinas), Gibraltar and Montserrat.

Bermuda

Article 9

78. In its 1999 direct request on the Workmen's Compensation (Accidents) Convention, 1925 (No. 17), the Committee noted that the Government again had indicated that a complete revision of the Workmen's Compensation Act was anticipated soon and that the legislation would deal with the points covered by article 5 of the Convention. It trusted that the Government would take all the necessary measures to undertake revision of the Workmen's Compensation Act, thereby giving effect to this provision of the Convention which provides that the compensation payable to the injured workman, or his dependants, where permanent incapacity or death results from the injury, shall be paid in the form of periodical payments; provided that it may be wholly or partially paid in a lump sum, if the competent authority is satisfied that it will be properly used.

Article 10

Protection of children and young persons in relation to employment and work

79. In its 1998 direct request on the Minimum Age (Industry) Convention (Revised), 1937 (No. 59), the Committee recalled the need to revise section 6 (2) (b) and (c) of the Employment of Children and Young Persons Act so as to limit the exceptions provided thereunder to the cases allowed by articles 2 and 3 of the Convention (employment - under certain circumstances - of children under the age of 15 in undertakings in which only members of the employer's family are employed and work done in technical schools).

80. The Committee of Experts furthermore addressed a direct request to the Government in 2000 on Convention No. 115, and in 2001 on Convention No. 10.

British Virgin Islands

81. The Committee of Experts addressed direct requests to the Government in 1998 on Convention No. 26, in 1999 on Convention No. 59, in 2000 on Convention No. 17 and in 2001 on Convention No. 10.

Falkland Islands (Malvinas)

Article 9

82. In its 1999 direct request on the Workmen's Compensation (Accidents) Convention, 1925 (No. 17), the Committee noted that the Executive Council of the Falkland Islands (Malvinas) did not consider changing the present system of compensation paid in a lump sum in the event of permanent disablement or death of workers to be justified, on the one hand, because of the small number of potential beneficiaries and, on the other hand, of the administrative burden that such a change would imply. The Committee hoped that the Government would be able to reconsider the question and that in a

future revision of the legislation it would not fail to take the necessary measures so that, in conformity with this provision of the Convention, the compensation payable in the event of permanent incapacity or death, shall be paid in the form of periodical payments.

83. The Committee of Experts furthermore addressed direct requests to the Government in 1998 on Convention No. 59 and in 2001 on Convention No. 10.

Gibraltar

Article 9

84. In its 2000 observation on Convention No. 42, the Committee noted the Government's indication that it envisages taking the necessary measures to amend the schedule of occupational diseases annexed to the Employment Injuries Insurance (Occupational Diseases) (Amendment) Regulations to bring them into conformity with the Convention.

85. The Committee of Experts furthermore addressed direct requests to the Government in 1997 on Convention 135, in 1999 on Conventions Nos. 59 and 142, and in 2001 on Conventions Nos. 29 and 100.

Montserrat

86. The Committee addressed direct requests to the Governments in 1996 on Convention No. 19 and in 1998 on Conventions Nos. 26 and 59.

D. Trinidad and Tobago

87. Information concerning Trinidad and Tobago has been supplied previously to the Committee in 1989.

88. The following relevant Conventions have been ratified and are in force for Trinidad and Tobago (for full names see the list of Conventions in Part I above): 1, 16, 19, 29, 87, 98, 100, 105, 111 and 159.

Article 6

89. In its 2000 direct request on Convention No. 29, the Committee recalled that under section 11 (2) of the Defence Act, 1962, which corresponds to section 19 (2) of the Defence Act, Chapter 14.01, a person below the age of 18 years may be enlisted with the consent of his parents or of the person in whose care he may be, no minimum age being fixed for such enlistment. It requested the Government to give consideration to amending section 19 (2) of the Defence Act, Chapter 14.01, so as to either fix the legal minimum age of enlistment at 18, or allow a person enlisted below the age of 18 to leave the service by his own decision upon attaining the age of 18.

90. In its 2001 observation on Convention No. 105, the Committee recalled that sections 157 and 158 of the Shipping Act, 1987 provide for imprisonment - involving compulsory labour under the Prisons Rules - in cases of disobedience, desertion and absence without leave; and

section 162, empowering forcible return on board ship of seafarers in desertion. Referring to paragraphs 110 and 117 of its 1979 General Survey on the abolition of forced labour, the Committee had previously pointed out that these provisions are incompatible with the Convention, insofar as they imply not only sanctions including compulsory work but also legal compulsion in the form of direct physical constraint or the menace of a penalty for participation in strikes or breaches of labour discipline or to ensure performance of services by workers. The Committee has noted the Government's indications in its reports of 2000 and 2001 that the revision of the Shipping Act is currently under way and all these issues are being considered in the process. It reiterated firm hope that the revising text would be adopted in the near future and that the legislation will be brought into conformity with the Convention.

91. The Committee had previously referred to section 8 (1) of the Trade Disputes and Protection of Property Ordinance, which lays down penalties involving compulsory labour for breach of contract by persons employed in certain public services and is not limited in this respect to services whose interruption might endanger the life, personal safety or health of the whole or part of the population. The Committee has noted the Government's statements in its reports of 2000 and 2001 that this legislation would be repealed soon, since it is "colonial" legislation and is not in practice in Trinidad and Tobago. It hoped that the Government would take the necessary measures in order to ensure compliance with the Convention on this point.

92. The Committee also recalled its previous comments on section 69 (1) (d) and (2) of the Industrial Relations Act, Chapter 88.01, which prohibits teachers from taking part in a strike, subject to penalties of imprisonment involving an obligation to work. The Government had indicated in its reports of 2000 and 2001 that the committee responsible for reviewing the Act has made no recommendation in respect of that issue. The Committee reiterated firm hope that the necessary measures will be taken in the near future in order to bring the above-mentioned provisions of the Industrial Relations Act into conformity with the Convention.

93. In its 2001 observation on Convention No. 111, the Committee noted with interest the adoption of the Equal Employment Act, 2000, which prohibits discrimination on the basis of sex, race, ethnicity, origin, religion, marital status or disability in relation to employment, education, the provision of goods and services, as well as accommodation. The Committee noted that discrimination in employment as defined by the Act includes discrimination as regards recruitment, hiring, terms and conditions of employment, promotion, transfer and training, access to facilities or services associated with employment or any other benefit, vocational training, as well as dismissal or subjecting a person to any other detriment. The Committee also noted that the Act establishes an Equal Opportunity Commission and an Equal Opportunity Tribunal. Referring to previous comments noting the lack of legislative protection, the Committee welcomed the adoption of the new Act. It noted, however, that political opinion is not mentioned as one of the prohibited grounds. It requested the Government to indicate the reasons for this omission, as well as the manner in which discrimination on grounds of political opinion is prohibited in employment in practice and hoped that the Government would consider amending the Act, bringing it fully in line with article 1 (l) (a) of the Convention.

Article 7

Equal remuneration

94. In its 2000 direct request on Convention No. 100, the Committee noted with interest the recent adoption of the Equal Opportunity (No. 2) Act, 2000, which expressly prohibits discrimination in employment and promotes equality of opportunity. While noting that this prohibition appears to be sufficiently broad to cover the elements of remuneration set out in the Convention, in the absence of a specific provision relating to equal pay for work of equal value, the Committee asked the Government to indicate the manner in which the principle of equal remuneration for men and women for work of equal value is to be applied in practice. The Committee noted also that certain sectors of activity and groups of workers are excluded from the application of the Act including, among others, sports, clubs, voluntary bodies, non-profit organizations and religious bodies (Part V, Non-application of the Act) and domestic workers (art. 13 (1)). In this context, the Committee also drew the attention of the Government to part-time workers, who, although covered by the new Act, are excluded from the application of other legislative provisions. The Committee asked the Government to provide information indicating the manner in which these workers will be protected under the Convention. The Committee also called upon the Government to eliminate any wage discrepancies between men and women that exist in collective agreements.

Article 8

95. In its 2000 observation on Convention No. 87, the Committee commented on various sections of the Industrial Relations Act, 1972. As concerns the prohibition under section 67 of industrial action in essential services, the Committee noted the inclusion of sanitation services and a public school bus service in the list of essential services in schedule 2 and considered that such services could not be considered to be essential in the strict sense of the term. In this respect, the Committee drew the Government's attention to paragraph 160 of its 1994 General Survey on freedom of association and collective bargaining wherein it states that, in order to avoid damages which are irreversible or out of all proportion to the occupational interests of the parties to the dispute, as well as damages to third parties, the authorities could establish a system of minimum service in other services which are of public utility rather than impose an outright ban on strikes, which would be limited to essential services in the strict sense of the term. Noting further that section 69 appears to prohibit the teaching service and employees of the Central Bank from taking industrial action, under penalty of 18 months' imprisonment, the Committee requested the Government to indicate whether these restrictions were still in force and, if so, to take the necessary measures to repeal them so that teachers and bank employees are not prohibited from undertaking industrial action. As concerns the Minister's power under section 61 of the above-mentioned Act to refer a dispute to the Court and, under section 65, in cases where the national interest is threatened or affected, the Committee considered that such powers should be limited to essential services in the strict sense of the term, as indicated above, to public servants exercising authority in the name of the State and to cases of acute national crisis.

96. In its 2001 observation on Convention No. 98, the Committee requested the Government to amend legislation that affords a privileged position to registered associations, without providing objective and pre-established criteria for determining the most representative association (section 24 (3) of the Civil Service Act, sections 26 and 28 of the Prison Service Act).

97. The Committee also recalled the need to amend section 34 of the Industrial Relations Act, Chapter 88:01, in order to allow a union whose members constitute the largest number of workers in a bargaining unit, even if it is unable to reach a membership of 50 per cent of the workers in that bargaining unit, to negotiate collectively employment conditions. The Committee noted the Government's statement to the effect that the tripartite committee established to amend the Industrial Relations Act considered that this provision should not be amended based on the belief that multiple bargaining agents would create industrial conflict in view of the culture of the country. No recommendation had therefore been made to change the existing law in this regard. In this respect, the Committee emphasized that, where there is a single trade union in a bargaining unit with less than the absolute majority, this type of conflict cannot arise, and where various minority unions exist, their joint participation in the bargaining process could be arranged in an equitable manner or it could be envisaged that collective agreements apply only to the members of the respective trade union. The Committee recalled once again that the requirement that a union obtain the support of an absolute majority of the workers in the bargaining unit to be granted bargaining rights means that there is a risk in practice in many cases that workers will be deprived of the benefits of collective bargaining. The Committee therefore requested the Government to take the necessary measures to ensure that this provision is amended so that, where no union represents an absolute majority of workers, the union which represents a relative majority of workers in the bargaining unit can carry out negotiations to conclude a collective agreement, at least on behalf of its own members.

98. The Committee of Experts furthermore addressed a direct request to the Government in 1999 on Convention No. 19, and in 2001 on Conventions Nos. 16 and 111.

Notes

[1] Decisions of the Governing Body at its 201st session (November 1976) and at its 236th session (May 1987).

[2] Information on the procedures and machinery for the implementation of ILO standards, including the operation of its supervisory bodies, can be found in United Nations Action in the Field of Human Rights (United Nations publication, Sales No. E.94.XIV.11), chap. II, sect. C.1. Further information can be found on the ILO's Internet web site at www.ilo.org.

[3] There are, in addition, particularly for articles 7 and 9, a number of Conventions dealing with corresponding matters in particular occupational sectors (e.g. road transport, seafarers, fishermen, dock workers, plantation workers, nursing personnel) or with particular categories of workers (e.g. migrant workers, workers in non-metropolitan territories). These Conventions are not included in the present list but are taken into account in the indications concerning the situation in individual countries.

Annex

Index of countries and of relevant information supplied by the ILO since 1978

Country	Document reference
Afghanistan	E/1986/60 E/1989/6 E/1990/9 E/1991/4
Algeria	E/1995/127 E/C.12/2001/SA/1
Argentina	E/1995/5 E/C.12/1999/SA/1
Armenia	E/C.12/1999/SA/1
Australia	E/1979/33 E/1981/41 E/1985/63 E/1986/60
Austria	E/1981/41 E/1987/59 E/1988/6 E/1995/5
Azerbaijan	E/1997/55
Barbados	E/1982/41
Belarus	E/1979/33 E/1981/41 E/1985/63 E/1987/59 E/1996/98
Belgium	E/1994/63
Bulgaria	E/1983/40 E/1980/35 E/1985/63 E/1988/6 E/1998/17 E/C.12/1999/SA/1

Country	Document
Cameroon	E/1998/6
Canada	E/1982/41 E/1988/6 E/1989/6 E/1994/5 E/1998/17
Central African Republic	E/1997/55
Chile	E/1979/33 E/1981/41 E/1985/63 E/1988/6
Colombia	E/1979/33 E/1985/63 E/1990/9 E/1995/127
Costa Rica	E/1990/9 E/1991/4
Croatia	E/C.12/2001/SA/1
Cyprus	E/1979/33 E/1981/41 E/1985/63 E/1986/60 E/1989/6
Czech and Slovak Federal Republic	E/1979/33 E/1981/41 E/1986/60 E/1987/59
Czech Republic	E/C.12/2001/SA/1
Denmark	E/1979/33 E/1981/41 E/1985/63 E/1987/59 E/1998/17

Country	Document
Dominican Republic	E/1990/9 E/1991/4 E/1995/127 E/1996/98
Ecuador	E/1978/27 E/1985/63 E/1990/90 E/1991/4
Egypt	E/C.12/2000/SA/1
El Salvador	E/1995/127 E/1996/40
Finland	E/1979/33 E/1981/41 E/1985/63 E/1986/60 E/1996/98
France	E/1986/60 E/1989/6 E/C.12/2001/SA/1
Georgia	E/C.12/2000/SA/1
German Democratic Republic	E/1978/27 E/1981/41 E/1985/63 E/1987/59
Germany, Federal Republic of	E/1979/33 E/1981/41 E/1986/60 E/1987/59
Guatemala	E/1995/127 E/1996/40
Guinea	E/1996/40
Guyana	E/1995/127 E/1997/55

Country	Document
Honduras	E/1996/98
Hungary	E/1978/27 E/1985/63 E/1986/60
Iceland	E/1994/5 E/1998/17
India	E/1986/60
Iran (Islamic Republic of)	E/1978/27 E/1994/5
Iraq	E/1981/41 E/1985/63 E/1986/60 E/1997/55
Ireland	E/C.12/2001/SA/1
Israel	E/1998/17
Italy	E/1982/41 E/C.12/2000/SA/1
Jamaica	E/1980/35 E/1989/6 E/C.12/2001/SA/1
Japan	E/1985/63 E/1987/59
Jordan	E/1987/59 E/C.12/2000/SA/1
Kenya	E/1994/63
Libyan Arab Jamahiriya	E/1996/98 E/1997/55
Luxembourg	E/1990/9

Country	Document
Madagascar	E/1981/41 E/1985/63 E/1986/60
Mauritius	E/1995/127
Mexico	E/1985/63 E/1990/9 E/1994/5 E/C.12/1999/SA/1
Mongolia	E/1978/27 E/1981/41 E/1985/63 E/1987/59
Morocco	E/1994/63
Netherlands	E/1989/6 E/1998/17
Netherlands (Antilles)	E/1987/59 E/1998/17
Netherlands (Aruba)	E/1998/17
New Zealand	E/1994/5
Nicaragua	E/1986/60 E/1994/5
Nigeria	E/1997/55 E/1998/17
Norway	E/1979/33 E/1981/41 E/1985/63 E/1988/6 E/1995/127

Country	Document
Panama	E/1981/41 E/1988/6 E/1989/6 E/1990/9 E/1991/4 E/1992/4
Paraguay	E/1995/127 E/1996/40
Peru	E/1985/63 E/1995/127
Philippines	E/1978/27 E/1985/63
Poland	E/1979/33 E/1981/41 E/1986/60 E/1987/59 E/1989/6 E/1998/17
Portugal	E/C.12/2000/SA/1
Portugal (Macau)	E/1996/98
Romania	E/1979/33 E/1981/41 E/1985/63 E/1988/6
Russian Federation	E/1997/55
Rwanda	E/1985/63 E/1986/60 E/1989/6
Saint Vincent and the Grenadines	E/1997/55
Senegal	E/1981/41 E/1994/5
Solomon Islands	E/1998/17

Country	Document
Spain	E/1980/35 E/1982/41 E/1985/63 E/1986/60 E/1996/40
Sri Lanka	E/1998/17
Suriname	E/1995/5
Sweden	E/1978/27 E/1981/41 E/1985/63 E/1987/59
Syrian Arab Republic	E/1980/35 E/1981/41 E/1990/9 E/1992/4
Trinidad and Tobago	E/1989/6
Tunisia	E/1978/27 E/1988/6 E/1989/6 E/1998/17
Ukraine	E/1995/127
Ukrainian SSR	E/1979/33 E/1982/41 E/1985/63 E/1986/60
United Kingdom of Great Britain and Northern Ireland	E/1978/27 E/1981/41 E/1985/63 E/1991/4 E/1995/5 E/1997/55
United Kingdom (Hong Kong)	E/1996/98

Country	Document
United Kingdom (Non-metropolitan territories)	E/1979/33 E/1982/41 E/1985/63 E/1996/98
United Republic of Tanzania	E/1981/41
Uruguay	E/1994/5 E/1994/63
USSR	E/1979/33 E/1981/41 E/1985/63 E/1987/59
Venezuela	E/1985/63 E/1986/60
Viet Nam	E/1994/5
Yemen	E/1990/9 E/1991/4
Yugoslavia	E/1983/40 E/1985/63
Zaire	E/1988/6
Zambia	E/1986/60
Zimbabwe	E/1997/55

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COMMITTEE ON ECONOMIC, SOCIAL
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28th session
29 April-17 May 2002
Item 3 of the provisional agenda

SUBSTANTIVE ISSUES ARISING IN THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Follow-up to the Committee's Day of General Discussion on Right to Education (article 13 of the Covenant) and to the World Education Forum(Dakar, April 2000), organized in co-operation with UNESCO

Friday, 10th May 2002, 15.00-18.00h

THE CONSTITUTIONAL PROVISIONS ON THE RIGHT TO EDUCATION AND MODERNIZING/DEVELOPING NATIONAL LEGISLATION IN KEEPING WITH THE STATE OBLIGATION/GOVERNMENT RESPONSIBILITY UNDER THE DAKAR FRAMEWORK FOR ACTION

Document submitted by UNESCO*

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Introduction

1. Education for All is an integral part of UNESCO's constitutional mission. The Constitution of UNESCO, which expresses the belief of its founders in "full and equal opportunities for education for all", provides basis for the normative action. The *World Declaration on Education for All: Meeting Basic Learning Needs* (1990) provided a new vision for education and gave impetus to normative action in Member States. The authors of the Declaration have expressed their determination to "act jointly" to achieve Education for All (EFA) goals, asserting that "education is a fundamental right for all people, women and men, of all ages, throughout our world". In its Preamble, the Declaration recognizes "the necessity to give to present and coming generations an expanded vision of, and a renewed commitment to, basic education to address the scale and complexity of the challenge [providing basic education for all]".

2. The *World Education Forum*, organized in April 2000 in Dakar imparted further dynamism to achieving the right to basic education for all, without any discrimination or exclusion. The *Dakar Framework for Action* clearly re-affirms "the vision (...) supported by the *Universal Declaration of Human Rights* and the *Convention on the Rights of the Child*, that all children, young people and adults have the human right to benefit from an education that will meet their basic learning needs in the best and fullest sense of the term, an education that includes learning to know, to do, to live together and to be" (paragraph 2). It thus refers to some major international standard –setting instruments relating to the right to education. It reflects certain main principles such as the principle to include universal access to learning; the principle of non-discrimination, and the principle of equity. Moreover, considering education as a fundamental right as a key to sustainable development and peace within and between countries, it reiterates the critical role of education in empowering individual and transforming societies.

State Obligation/Government Responsibility for Achieving Basic Education for All as a Fundamental Human Right as reaffirmed at the World Education Forum

3. The governments, organizations, agencies, groups and associations represented at the World Education Forum, committed themselves "to the achievement of education for all (EFA) goals and targets for every citizen and for every society" (Para.1). In order to achieve the goals and objectives set at Dakar[1], they pledged themselves to a strategy, inter alia, to: "mobilize strong national and international political commitment for education for all, develop national action plans and enhance significantly investment in basic education" (para. 8 i). The Dakar Framework for Action expresses "a collective commitment to action. Governments have an obligation to ensure that EFA goals and targets are reached and sustained" (Para. 2) and recognizes the importance of "political will and stronger national leadership" (Para. 10). Clearly, the right to education as reaffirmed at the World education Forum imposes an obligation upon States to ensure that citizens have opportunities to meet their basic learning needs.

4. The importance of the State obligation is further underlined by the Expanded Commentary on the Dakar Framework for Action: "All children must have the opportunity to fulfil their right to quality education in schools or alternative programmes at whatever level of education is considered « basic ». All states must fulfil their obligation to offer free and compulsory primary education in accordance with the United Nations Convention on the Rights of the Child and other international commitments"[2].

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[1] **These relate essentially to universalising access to good quality primary education for all, providing equitable access to basic and continuing education programmes, eliminating gender disparities in education, promoting education for all policies; and conducting educational programmes in ways that promote mutual understanding and peace.**

[2] Education for All: Meeting Our Collective Commitments – Expanded commentary on the Dakar Framework for Action, prepared by the World Education Forum Drafting Committee, Paris, 23 May 2000, (para. 32).

5. The State obligation involves the responsibility of the policy makers. "Education planners have a responsibility to find the children who are not in school and to design programmes to include every child in education, guided by the principle of the *best interests of the child*"[3].

6. For achieving the six objectives agreed at the World Education Forum, the main responsibility devolves upon the governments. UNESCO's Medium-Term Strategy 2002-2007 reiterates this: "Advancing the right to education as enshrined in the Universal Declaration of Human Rights is central to UNESCO's mission. Free, compulsory and universal primary education for all is among the most clearly defined of these rights, which governments have duty and responsibility to make a reality"[4]. This was further underlined at the first meeting of the High Level Group on Education for All, convened by the Director General of UNESCO at UNESCO Headquarter on 29 and 30 October 2001. In the Communiqué issued at end of this meeting, the participants underlined "the core responsibility of governments for education, and especially to provide free and compulsory quality basic education for all"[5].

7. The legal implications of the Dakar Framework for Action were examined during the Informal Expert Consultation on Monitoring the Right to Education, organized at UNESCO Headquarter in March 2001. The Consultation underlined the importance of (i) examining the bases of the Dakar Framework for Action in both modern constitutional law and international law, and (ii) establishing the relationship between the Dakar Framework and existing normative instruments as a continuity of existing law.

8. The State obligation for providing basic education for all, undertaken at the World Education Forum must be viewed as part of the obligations under international law (pertaining to the right to education) as contained in international instruments, notably Article 26 of the Universal Declaration on Human Rights, Articles 4 and 5 of the *Convention against Discrimination in Education* (1960), Articles 28-30 of the *Convention on the Rights of the Child*, and Articles 13 and 14 (right to education) of the International Covenant on Economic, Social and Cultural Rights. Under the International Covenant, the obligation of the State is broad - the obligation to respect, protect and fulfil[6]. General Comment No. 13 on right to education (Article 13 of the Covenant) adopted by the Committee on Economic, Social and Cultural Rights in December 1999 lays emphasis on how the States are duty bound to implement the provisions enshrined in the International Covenant (article 13) and refers to the *World Declaration on Education for All: Meeting Basic Learning Needs* (1990). Just as the Dakar Framework for Action, Article 13 of the International Covenant provides for the right to receive free and compulsory primary education, which should be made available to *every one*, and enjoins upon the State parties to the Covenant obligation for its progressive realisation. This obligation has been interpreted to be of continuing nature for moving as expeditiously and effectively as possible towards the realisation of this right and is of immediate effect[7].

9. A number of declarations, resolutions, and programmes of actions[8] adopted by the United Nations General Assembly reinforce the EFA, especially the Government responsibility. Thus

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[3] Report by the United Nations Secretary General "We, the Children – Meeting the promises of the World Summit for Children, United Nations, September 2001 (P. 70).

[4] UNESCO's Medium-Term Strategy 2002-2007, UNESCO, Paris, (C/4, Para. 55).

[5] Communiqué from High-Level Group on Education for All First Meeting, UNESCO, Paris, 29-30 October 2001 (paragraph 5).

[6] General Comments No. 13 on the right to education (Article 13 of the Covenant), adopted by the Committee on Economic, Social and Cultural Rights at its twenty-first session in 1999. E/C. 12/1999/10, 2 December 1999. (para. 50).

[7] Ibid. (Paras. 43-44)..

[8] The *Copenhagen Declaration and Programme of Action* adopted by the World Summit on Social development (March 1995) calls for "strengthening education at all levels and ensuring the access to education of people living in poverty, in particular their access to primary education and other basic education opportunities". The *Programme of Action on a Culture of Peace*, adopted by the UN General Assembly on 13 September 1999 entitled « Actions fostering a culture of peace through education » contains several provisions relating to the right to

- the UN General Assembly Resolution 56/116 on '*United Nations Decade Literacy Decade: education for all*' (adopted on 19 December 2001) urges Member States, in close partnership with international organizations as well as non-governmental organizations "to promote the right to education for all and to create conditions for all for learning throughout life" and assigns key role to UNESCO.

- the Commission on Human Rights Resolution[9] 2001/29, dated 20 April 2001 on 'the Right to Education' calls upon the States to "ensure progressively and on the basis of equal opportunity that primary education is compulsory, accessible and available to all".

10. The importance of UNESCO's normative action in the context of the follow-up to the Dakar Framework for Action is recognized in the Framework Agreement between UNESCO and UNICEF on Collaboration in the Field of Education, of 9 February 1999: "UNESCO, with its mandate to take on a leading, normative role" is well placed to "promote policy discussions around basic education". UNESCO will play a "normative role regarding conceptual development and policy formulation for upstream activities [...]".[10]

11. The State obligation for the right to education was underlined by UNICEF, while addressing the first meeting of the High-Level Group on Education for All in October 2001: "we are united in the knowledge that a quality primary education is the right of all children – and the obligation of all governments, its primacy proclaimed by agreements ranging from the Universal Declaration of Human Rights to the Convention on the Rights of the Child and the Jomtien Declaration on Education for All. [...]"[11].

12. A number of standard-setting instruments adopted by UNESCO (relating to the right to education) reinforce the State obligations contained in other international instruments and develop this right in its various dimensions. In adopting them, the Governments have undertaken political commitments under the auspices of UNESCO.

13. States and governments adopting these declarations and recommendations also subscribe to moral commitments. These instruments clearly state their intention to implement them, even though, as in the case of United Nations resolutions, there are no legal penalties for non-compliance. They demonstrate an indisputable moral resolve to abide by the commitments assumed by those States and their partners when voicing their intention to adopt a given set of guidelines, as seen in the *World Declaration on Education for All* or the *Dakar Framework for Action*. The ethical basis and moral force of these declarations therefore needs to be recognized. Although not legally binding, agreed instruments have a normative character in their intent and effects and the States concerned regard them as political or moral commitments. The ethical value of such declarations is set to acquire increasing recognition[12].

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education. It provides (in section 9) that actions fostering a culture of peace through education should :

- Reinvigorate national efforts and international co-operation to promote the goals of *education for all (...)*;
- Ensure that children, from an early age, benefit from education (...);
- Ensure equality of access for women, especially girls, to education.

[9] Commission on Human Rights Resolution 2001/29, (E/CN.4/RES/2001/29), dated 20 April 2001.

[10] Recommendations of the UNESCO/UNICEF Joint Committee on Education, documents 160 EX/9 and Corr., Paris, September 2000 (paras. 3 and 4).

[11] Statement by the representative of UNICEF at the first meeting of the High-Level Group on Education for All, convened by UNESCO's Director General, UNESCO, Paris, 29-30 October 2001.

[12] "The commitments that States and governments make in adopting standard-setting instruments need to be considered in the light of the legal and moral force of declarations in modern international law. United Nations doctrine considers a declaration to be "a formal and solemn

14. Monitoring the implementation of UNESCO's instruments in Member States contributes to achieving the Dakar goals. Thus:

15. the sixth consultation on the implementation of the Convention against Discrimination in Education (1960) in Member States conducted recently[13] resulted in the resolution adopted in November 1999 by UNESCO's General Conference[14]. This resolution invites "the Director General to strengthen UNESCO's action against discrimination in education to ensure the widest possible democratisation of education and to study, in view of the Seventh Consultation and in co-operation with the United Nations, the possibility of creating a coherent mechanism of reporting on and monitoring of the right to education as it is set down in various United Nations conventions on human rights". The Convention enjoins upon States obligations in order to ensure that there is no discrimination in education and formulates some basic principles of non discrimination, equity and equality of opportunity and of national treatment in education. The States are duty-bound to ensure that these principles are upheld.

16. implementation of the *Hamburg Declaration on Adult Learning* (1997)[15] whose importance for lifelong learning needs no emphasis: Stating that "Adult education" is more than a right", the declaration stipulates that "The State remains the essential vehicle for ensuring the right to education for all, particularly for the most vulnerable groups of society, such as minorities and indigenous peoples, and for providing an overall policy framework";
17. follow-up measures to the *World Declaration on Higher Education for the Twenty-first Century*[16], which covers a range of activities. The Priority Action at National Level, provided for in the Declaration, underlines the responsibilities of the "States, including governments, parliaments and other decision-makers" to "establish, where appropriate, the legislative, political and financial framework for the reform and further development of higher education" so that it shall be "accessible to all on the basis of merit" without any discrimination;

18. implementation of the *Declaration and Integrated Framework of Action on Education for Peace, Human Rights and Democracy* (1995). Report submitted to the Executive Board at its 162nd session in October 2001 on such implementation also takes an overview of the developments in values education in Member States;

19. As the Expert Consultation on Monitoring the Right to Education, organized at UNESCO Headquarter in March 2001 suggested, the Dakar Framework for Action must be examined in its nexus with constitutional law.

Constitutional and Legal Bases of the Dakar Framework for Action

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instrument, suitable for occasions when principles of great and lasting importance are being enunciated [...]". In view of the greater solemnity and significance of a "declaration" (as opposed to a "recommendation"), it may be considered to impart, on behalf of the (United Nations) organ adopting it, a strong expectation that members of the international community will abide by it. Consequently, insofar as the expectation is gradually justified by State practice, a declaration may by custom become recognized as laying down rules binding upon States". UNESCO's standard setting instruments, UNESCO, Paris, 1986 (General introduction, p. xiv).

[13] « Examination of the Reports and Responses received in the Sixth Consultation of Member States on the Implementation of the Convention and Recommendation against Discrimination in Education », (document 156 EX/21), and decision 6:3 taken by the Executive Board.

[14] 30 C/Resolution 15.

[15] The *Hamburg Declaration on Adult Learning* adopted by the Fifth International Conference on Adult Education (14-18 July 1997), carries "The Agenda for the Future" which sets out commitment to development of adult learning, containing a series of commitments on important themes such as "ensuring universal right to literacy and basic education". The Declaration also contains *Follow up Strategy.*

[16] The Declaration was adopted by the World Conference on Higher Education: Vision and Action (September 1998) and contains a *Framework for Priority Action for Change and Development in Higher Education.*

20. It is vital to strengthen the constitutional and legal bases of the right to education and to take fully into account the legal implications of the Dakar Framework for Action. UNESCO, which has assumed greater responsibilities in the field of the right to education in the wake of the World Forum on Education for All has a special role in this respect. Meeting the challenge of universalising access to education for the millions of children who are deprived of it and achieving the basic right to education for all as a fundamental human right is one of the biggest moral challenges of our times.

CONSTITUTIONAL BASES OF THE RIGHT TO EDUCATION

21. As regards constitutional law and the enforcement of the right to education, India's experience and approach has special significance in view of the recent decisions by the Supreme Court of India to the effect that the right to education is an integral part of the right to life[17]. The Supreme Court took into account the State obligation under the international treaties namely the International Covenant on economic, Social and Cultural Rights (Article 13 of the Covenant – the right to education).

22. The amendment to the Constitution of India (Article 21A) reinforces the State obligation and government's responsibility: With a view to making the right to free and compulsory education a fundamental right, a new article has been inserted in India's Constitution – Article 21A – conferring on all children in the age group of 6 to 14 years the right to free and compulsory education. The constitutional provisions as amended read: "The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine".

23. This is a landmark development and provides a pioneering response to the Human Development Report 2000 – to "achieve the guarantee of compulsory primary education in all constitutions by 2010" and asserting everyone's *entitlement* to a free elementary education, with responsibility for the social system[18].

24. In this respect, developments elsewhere such as constitutional reforms such as in Kenya are pertinent.

MODERNIZING/DEVELOPING NATIONAL LEGISLATION

25. At the World Education Forum, the participants expressed their determination: "We will strengthen accountable international and regional mechanisms to give clear expression to these commitments and to ensure that the Dakar Framework for Action is on the agenda of every interna.ional and regional organization, every national legislature and every local decision-making forum"[19] (para. 13 Dakar).

26. The crucial question is how the States fulfil their obligations and their responsibilities by modernizing/developing national legislation, where necessary and how their political commitments, especially those undertaken under the aegis of UNESCO, are translated into government policies for action?

27. It is thus important to translate the political commitments into practice. Concern for this was expressed recently at the first meeting of the High-Level Group for Education for All, convened by the Director General of UNESCO at UNESCO Headquarter, in October 2001), especially for:

- "making basic education compulsory and truly free of charge for all children",

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[17] **Decision by a Constitution Bench of this Court in Unni Krishnan, J.P. v. State of A.P. (1993 I. SCC 645). The Supreme Court held in M.C. Mehta versus State of Tamil Nadu and others. that Article 24 in Part IV of India's Constitution was casting a duty on the State to endeavour to provide free and compulsory education to children. (1996, 6, Supreme Court cases, 756).**

[18] Human Development Report 2000, published for UNDP by Oxford University Press, 2000 (p. 13).

[19] The Dakar Framework for Action (paragraph 13). Emphasis added.

- "drawing up education legislation and priorities in line with the Human rights Conventions and the EFA goals",
- "meeting the special needs of children with disabilities, health or other learning problems through 'inclusive education'".[20]

28. In the context of follow-up to the World Education Forum, certain crucial questions arise: how governments fulfil their primary responsibility in universalising primary/basic education; how these obligations and commitments are incorporated into constitutional provisions and translated into educational laws and policies? What is the status of the right to education in a country's constitution and/or national laws? To what extent, the right to education is enforceable? And how a country's laws and educational policies are implemented? How the education policies and laws are undergoing modifications and are being reformulated in response to the State Obligations/government responsibilities undertaken at the World Education Forum? What are the trends in policy developments promoting the universal access to the realisation of the right to education? Several trends and developments as presented during the first meeting of the High Level Group on EFA (October 2001) as well as at the 31st session of the General Conference in November 2001 are noteworthy - constitutional amendment in India to provide for the right to free, compulsory education; new law – Compulsory Primary Education Act (ordinances) 2001 - in Pakistan; the Education Act of 2000 currently before the National Legislature in Liberia; the new legislation on the right to education in Lithuania reflecting the philosophy behind EFA; need for new legislation on EFA for the countries in transition to democracy underlined by Russian Federation; and the importance of legal measures for marginalized groups as suggested by Namibia etc.

29. Following the Constitutional amendment in India, legislation would be introduced in parliament after the Constitution (Ninety-third Amendment) Bill, 2001 is enacted. Moreover, the impact the Constitutional amendment would have on the directive principles of state and on state education policy would be very significant, since its objective is:

- to provide in Article 45 of the Constitution that the State shall endeavour to provide early childhood care and education to children below the age of 6 years; and
- to amend Article 51A of the Constitution with a view to providing that it shall be the obligation of the parents to provide opportunities for education to their children.

30. Modernizing/developing national legislation is important so that it conforms to the commitments to EFA goals and provides legal basis for National EFA Plans. Review of normative action in areas such as provision for free, compulsory primary education, the status and training of teachers; institutional responses to lifelong learning; gender equity, equal opportunity in education for all, inclusive education as also access to education by children in emergencies and difficult situations etc. is crucial in a spirit to ensure that they are in conformity with the goals and objectives set at the World Education Forum.

31. In this respect, a new law on education elaborated by the Republic of Lithuania is illustrative. The Republic of Lithuania elaborated in 2001 national legislation on education in the spirit of the Dakar Framework for Action. The new Law on Education reaffirms the right to education as a fundamental human right[21]. It provides that the new Education System should promote equal education opportunities, efficiency and quality of education also the Adult and Special Education in particular for socially excluded persons, persons with disabilities and vulnerable and disadvantaged children. The new Law also guarantees the quality of education services and their constant improvement through co-ordination of policy formation, management, planning, delegation of powers and responsibilities, analysis and monitoring, as recommended in the Dakar Framework for Action.

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[20] Statement by Mr. Carl Lindberg from Sweden at the first meeting of the High-Level Group', convened by the Director General of UNESCO at UNESCO Headquarter from 29-30 October 2001.

[21] The Law recognizes that education is a "fundamental human right". Chapter one, General Provisions, The new Law on Education, Republic of Lithuania, 2001.

32. In 2001, the Islamic Republic of Pakistan adopted a new Law – to provide for compulsory primary education in the Islamabad Capital Territory (Ordinance 2001)[22]. The objective of this Ordinance is to enable all children to attend a primary school until they have completed the primary education course. In that spirit, a Committee on Education has been constituted to ensure that every child, that falls under this Ordinance, really attends a school. The Law also lays down the responsibility of the parent, which includes a guardian or any other person who has the custody of the child. The Committee has the possibility to pass an order directing the parent, who has failed in his duty without a reasonable excuse, to cause a child to attend a school. The parent who fails to comply with this order may, on conviction by a Magistrate, be punishable with fine.

33. The Early Childhood Care and Development Act (5 December 2000)[23], enacted by the Philippines promulgates a Comprehensive Policy and a National System For Early Childhood Care and Development (ECCD) and institutionalises ECCD. The Act lays down the responsibilities of the National Government for developing policies and programmes, providing technical assistance and support to the ECCD service providers.

34. In keeping with the obligation and responsibility of the Government for achieving the objectives and goals of the Dakar Framework for Action, new legislation in the field of the right to education will also be necessary in many other countries, specially in countries in transition to democracy. It is only through a country's education laws and policies that the right to basic education for all can be given concrete shape in terms of educational programmes and projects. It is therefore important to examine the current policy developments and evolutions in national laws.

Issues for Consideration

35. A major issue is how to enhance recognition and importance of the legal implications of the Dakar Framework for Action, mainly with a view to strengthening constitutional and legislative bases of the right to education as a fundamental human right so as to concrete shape to the government responsibility? Issues relating to the elimination of the legal and other obstacles for realising the right to education - increasing racial discrimination, economic exclusion, growing poverty as well as the adverse impact of the privatisation of educational services in achieving education for all - and the State obligation to preserve education as *common good* need to be addressed more effectively. As UNESCO's Medium-Term Strategy (2003-2007) stipulates, "UNESCO will further seek to engage Member States and new educational providers in a **dialogue highlighting education as a public good and encourage all actors in the field of education to pay due regard in their undertakings to the need for equity, inclusion and social cohesion** in today's societies"[24]. As regards the obligation for providing universal access to education, international level action must defend most basic forms of education public services concept.

36. Increasing investment in basic education is indispensable for development. However, as the Report by the United Nations Secretary General "We, the Children – Meeting the promises of the World Summit for Children" (2001) states, "during the 1990's, reform packages in some countries led to the introduction of user fees where basic education had previously been free. This directly contradicts the commitments to free and compulsory education in the Convention on the Rights of the Child"[25]. In face of such trends, the question is how to ensure that critical and overriding importance of the right to education in the context of the national level policy measures and development strategies, while concluding arrangements with the financial institutions? Owing to provisions in various

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[22] The Islamabad Capital territory Compulsory Primary Education Ordinance, 2001.

[23] The Early childhood Care and Development Act (Republic Act No. 8980) of 5 December 2000. The Act provides that the ECCD shall be the joint responsibility of schools, parents, teachers and community associations and seeks to promote and encourage private sector initiative for the establishment of ECCD programmes.

[24] UNESCO's Medium-Term Strategy 2002-2007, UNESCO, Paris, (C/4, Para. 59).

[25] Report by the United Nations Secretary General "We, the Children – Meeting the promises of the World Summit for Children, United Nations, September 2001. This report mentions that "less than 2 per cent of international aid goes to primary or basic education, and the major recipients of aid for education are not the least developed countries" (p. 68).

international instruments, "States have an obligation to ensure that their actions as members of the international organizations, including international financial institution, take due account of the right to education"[26].

37. A matter which deserves a special attention is that the Dakar Framework for Action must be reflected in national laws and policies more effectively and necessary measures are taken so that Member States benefit from exchange of experiences in this respect. This is crucial in the context of UNESCO's normative action in this field which is assuming greater importance as the centrality of the right to education in the field of human rights is being increasingly recognized - education not only as a right in itself but also as "indispensable for the exercise of other human rights"[27].

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[26] General Comments No. 13 on right to education (Article 13 of the Covenant) , op.cit. (para.56).

[27] General Comments No. 13 on right to education (Article 13 of the Covenant). The General Comment states at the outset that "Education is both a human right in itself and an indispensable means of realizing other human rights".

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SUBSTANTIVE ISSUES ARISING IN THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Follow-up to the Committee's Day of General Discussion on Right to Education (article 13 of the Covenant) and to the World Education Forum (Dakar, April 2000), organized in cooperation with UNESCO

Friday, 10 May 2002, 15.00-18.00

PREPARATION, IMPLEMENTATION AND EVALUATION OF THE NATIONAL ACTION PLANS AS PROVIDED FOR IN THE DAKAR FRAMEWORK FOR ACTION AND THEIR RELATION WITH THE GENERAL COMMENTS ON ARTICLES 13 AND 14 OF ICESCR

Document submitted by UNESCO*

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Introduction

1. The World Education Forum at Dakar (April 2000) generated renewed international commitment to achieving basic education for all. The governments undertook political responsibility to "give substance and form to the goals and strategies" set out in the Dakar Framework for Action[1] adopted at the World Education Forum. The Dakar Framework for Action requests all "States to build on existing national sector strategies and to develop or strengthen existing national plans of action by 2002 at the latest". It stipulates that these EFA National Action Plans must be "integrated into a wider poverty reduction and development framework".[2] They should set out clear strategies for overcoming the special problems facing those currently excluded from educational opportunities, with a clear commitment to girls' education and gender equity.[3]

EFA national action plans - Governments' responsibility

2. What is significant is that the Dakar Framework for Action gives primacy to the national level action. This is very much akin to the spirit of article 14 of the International Covenant on Economic, Social and Cultural Rights relating to the right to education. It requires each State party which has not been able to secure compulsory primary education, free of charge, to undertake, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory primary education free of charge for all.

3. Preparation of a plan of action for achieving progressively free primary education is part of State obligation under international law relating to the right to education. General Comment No. 11 on article 14 (right to education) of the International Covenant on Economic, Social and Cultural Rights, adopted by the United Nations Committee on Economic, Social and Cultural Rights (CESCR) in 1999 is entitled *Plans of action for primary education.*[4] It states that "In spite of the obligations undertaken in accordance with article 14, a number of States parties have neither drafted nor implemented a plan of action for free and compulsory primary education".[5] It recognizes that "many diverse factors have made it difficult for States parties to fulfil their obligation to provide a plan of action". Nevertheless, "in line with its clear and unequivocal obligation under article 14, every State party is under a duty to present to the Committee a plan of action" (para. 3).[6] This General Comment, therefore, provides that "the State party is required to adopt a plan of action within two years. (...) The plan must cover all of the actions which are necessary in order to secure each of the requisite component parts of the right and must be sufficiently detailed so as to ensure the comprehensive realization of the right" (para. 8). Moreover, according to the General Comment No. 13 on article 13 of the International Covenant on Economic, Social and Cultural Rights, elaborated by the United Nations Committee on Economic, Social and Cultural Rights (CESCR) in collaboration with UNESCO, States parties to the International Covenant are obliged to "prioritize the introduction of compulsory, free primary education"... "At a minimum, the States parties are required to adopt and implement a national educational strategy ...".[7]

4. UNESCO has placed the outcome of the World Education Forum at the heart of its activities and education for all (EFA) high on its agenda. The Medium-Term Strategy 2002-2007 elaborated by the Organization reflects the education agenda adopted at

Dakar so that it guides UNESCO's action for the benefit of Member States. The Strategy reiterates the primacy of government responsibility and stipulates that "success in achieving the Dakar goals will be determined at the country level. A major task for UNESCO will be to **support Member States in policy reforms, especially the design and implementation of EFA policies and action plans as well as of legal instruments for promoting universal access to basic education**".[8] The Strategy further provides that "Member States must be the prime movers in designing or strengthening national EFA action plans by 2002, which ought to be embedded in both overall national education and poverty eradication strategies".[9]

5. The Dakar Framework for Action is reinforced by the *United Nations Literacy Decade: education for all* (2003-2012), whose objective is "to promote the right to education for all and to create conditions for all for learning throughout life".[10] The resolution adopted by the General Assembly on the Decade in December 2001 "*appeals* to all Governments to redouble their efforts to achieve their own goals of education for all by developing national plans in accordance with the Dakar Framework for Action (...)".[11]

Preparatory process and the current status of EFA national action plans

6. Soon after the World Education Forum, UNESCO initiated the process for preparing the National EFA Plans. In August 2000, "Country Guidelines on the Preparation of National EFA Plans of Action" were produced in all United Nations languages and disseminated to all countries.

7. As a result, many countries are in the process of the preparation of National EFA Plans. Innovative initiatives are being taken at regional level, besides setting up appropriate institutional bodies and mechanisms for the preparation and monitoring of education plans conducive to the implementation of the EFA Goals.

8. In May 2001, UNESCO launched a survey through a questionnaire with a view to appraising the status of National EFA Plans and to ascertaining the needs for technical support in plan preparation at country level.[12]

9. Results of the Survey, based on the responses by 71 countries by end December 2001 indicated that:

- 45 EFA plans (63 per cent) were now in place - 41 of these were prepared before the World Education Forum;

- 7 countries reported having no plan in place and 19 (27 per cent) countries are preparing the plans;

- half of the existing education plans remain at the level of policy statements, and just short of being credible action plans. In 31 countries out of 39 where education plans exist, Governments are reportedly going to readjust them to EFA Goals, which means that 58 countries out of 71 responding countries (over 85 per cent) still need to develop or adjust the existing education plans according to the EFA criteria;

- 58 countries out of 71 countries (over 80 per cent) would require methodological and technical support for the preparation of national EFA action plans or strengthening of existing ones.

10. Further completed questionnaires received by UNESCO will be processed for and communicated to all partners involved in the preparation of national EFA Action Plans.

Implementation and evaluation

11. The Dakar Framework for Action stipulates that "Political will and stronger national leadership are needed for the effective and successful implementation of national plans in each of the countries concerned" (para. 10).

12. The General Comment 11 elaborated by CESCR, mentioned above, also underlines the importance of Progressive implementation. "The plan of action must be aimed at securing the progressive implementation of the right to compulsory primary education, free of charge, under article 14. (...) the plan must specifically set out a series of targeted implementation dates for each stage of the progressive implementation of the plan. This underscores both the importance and the relative inflexibility of the obligation in question" (para. 10).

13. As the Dakar Framework for Action puts it, "Implementation of the preceding goals and strategies will require national, regional and international mechanisms to be galvanized immediately. (...) The functions of these mechanisms will include, to varying degrees, advocacy, resource mobilization, monitoring, and EFA knowledge generation and sharing".[13] Given the fact that the Dakar Framework for Action provides for institutional mechanisms - National EFA Forums[14] - guidelines prepared for country action and discussed with relevant EFA stakeholders aim at helping in particular, to establish national coordination committees. In the Survey mentioned above, in 71 countries that responded to the questionnaire, 47 countries (66 per cent) reported they had already set up EFA forums or EFA-related bodies while 21 (i.e., 34 per cent) reported they did not yet have such structures.

14. The United Nations Literacy Decade (2003-2012) imparts strength to the effective implementation of the National EFA Plans. The resolution adopted by the General Assembly on the Decade in December 2001 "*invites* Member States, the specialized agencies and other organizations of the United Nations system as well as relevant intergovernmental and non-governmental organizations to intensify further their efforts to implement effectively the World Declaration on Education for All" (para. 9). It is important to note that by this resolution, the General Assembly *decided* that UNESCO "should take a coordinating role in stimulating and catalysing the activities at the international level within the framework of the Decade" (para. 10).

15. As regards the **evaluation** of the National EFA Action Plans, of foremost importance is the evaluation of the Plan itself so that it conforms to EFA goals and criteria.

16. The analysis of some national EFA plans (both in place and under preparation) shows that some plans *contain only general policy statement,* followed by a more or less exhaustive listing of development actions without going further with multi-annual planning, time-bound indicators, prioritization, time and financial programming, costing and implementation strategies.

17. Although, as the Survey results mentioned above indicated, many countries reported that the existing education plans included EFA sub-sectors and targets, few seem to respond to EFA criteria. Most existing education plans remain at the level of policy statement and fall short of being operational action plans as proposed in the Dakar Framework for Action. Many of them were not prepared through the EFA process of wide stakeholder consultation and participation and did not integrate EFA Goals. Thus, methodological difficulties arise how to ensure the effective participation in policy formulation and preparation of Plans by civil society, and stakeholders.

18. More recently, draft "Generic Criteria for Assessing the Credibility of National EFA Plans" have been developed by UNESCO to be shared among partners. These aim to ensure that National EFA Plans are in line with national development frameworks in general and broader education sector policies in particular. It is imperative that the criteria used in assessing whether National EFA Plans are "credible" should indicate as to how the Plans address the question of quality education.[15]

19. As National EFA Plans should contain long-term strategy frameworks for the achievement of EFA goals by 2015 at the latest, as well as *shorter-term action plans* (e.g. 3 to 5-year rolling implementation plans depending on Governments' planning practices in place) - both being time-bound and action-oriented - their mid-term evaluation would be critical. In its paragraph 16 (vi), the Dakar Framework for Action foresees the importance of mid-term performance indicators.

20. In this connection, it is pertinent to recall that the General Comment No. 11 on article 14 (right to education) of the International Covenant, mentioned above, stipulates that "participation of all sections of civil society in the drawing up of the plan is vital and some means of periodically reviewing progress and ensuring accountability are essential. Without those elements, the significance of the article would be undermined".[16]

21. In preparing and implementing National EFA Plans "problems associated with the chronic under-financing of basic education by establishing budget priorities that reflect a commitment to achieving EFA goals and targets at the earliest possible date, and no later than 2015" (para. 9) have to be dealt with. Enhancing financial resources for EFA is of critical importance as basic education is under-funded. Independent external evaluation is important whether the government's political commitment reflects in financial allocation for basic education for all - through national legislation and education policy and programmes.

Importance of technical assistance

22. If developing countries are to achieve EFA objectives, they will need human and technical capacity to develop educational plans, manage and administer their educational systems efficiently, deliver effective educational services in local communities, and monitor progress using educational indicators based on reliable data.

23. The Dakar Framework for Action provides that "for those countries with significant challenges, such as complex crises or natural disasters, special technical support will be provided by the international community" (para. 16). The World Bank estimates that at least 32 countries are unlikely to meet the Universal Primary Education (UPE) target at the current pace. Of the 32 countries judged to be most at risk of not meeting the EFA primary enrolment target, 12 are countries in conflict or emerging from it. While most of the latter may ultimately be included in the PRSP process, this will not occur soon.

24. As is acknowledged by the Dakar Framework for Action "many countries currently lack the resources to achieve education for all within an acceptable time-frame. New financial resources, preferably in the form of grants and concessional assistance, must therefore be mobilized by bilateral and multilateral funding agencies, including the World Bank and regional development banks, and the private sector"[17] (para. 10). Similarly, the General Comment 11 elaborated by CESCR, mentioned above, states that "a State party cannot escape the unequivocal obligation to adopt a plan of action on the grounds that the necessary resources are not available. (...) Where a State party is clearly lacking in the financial resources and/or expertise required to 'work out and adopt' a detailed plan, the international community has a clear obligation to assist" (para. 9).[18] In this context, it is important to move in the direction of augmenting the ODA education funding to basic education and enhance the World Bank lending for basic education as it has declined significantly in recent years (though World Bank funding for basic education as a percentage of total education funding has been relatively constant).

25. Dealing with the capacity constraints is crucial for developing and implementing National EFA Plans. The Survey mentioned above provided some insights into the specific areas of technical support required for the preparation of National EFA Plans. The majority of countries reported they would require external support in the preparation and/or readjustment of National EFA Plans.

26. A major limiting factor is that in the majority of countries, education information systems, which are prerequisites for providing necessary data and information for EFA planning, are reportedly weak and need to be improved in terms of data collection, analysis or utilization. Most developing countries stated they would require methodological and technical support for the preparation of the EFA plans or the strengthening of existing plans. Two thirds of 71 responding countries do not seem to have reliable capacities for data collection, processing and/or analysis for preparing EFA action plans.

27. Technical assistance, specially technical upstream services in the field of policy formulation and plan preparation is indispensable in the light of the needs expressed for technical support. UNESCO's Approved Programme and Budget 2002-2003 foresees that UNESCO will "assist Member States in developing coherent EFA action plans, with close links between different levels of education and forms of learning".[19]

Towards enhanced inter-agency cooperation

28. Agency coordination mechanisms are necessary in order to provide concerted and effective support to countries in the preparation of National EFA Plans by helping to integrate sub-sectoral plans and development projects into coherent and realistic EFA frameworks. It is

only on the basis of a credible national education strategy, situated within a broader poverty reduction framework that tangible support to the EFA movement can be expected from the funding agencies. Joint programming of agencies for support to the design of PRSP and National EFA Plans can help enhance the efficiency and synergy of the technical assistance for the benefit of the recipient countries. Besides, it is crucial to optimize the contribution by the National EFA Plans to *the 10-Year United Nations Girls' Education Initiative (UNGEI)*[20] and to focus particular attention on issues of access and equity concerning girls' opportunities for primary schooling.

29. In this context, it is pertinent to refer to the General Comment No. 13 on article 13 of the International Covenant mentioned above. Part III of this General Comment entitled "Obligation of Actors other than State Parties" attaches special importance to "the role of the United Nations agencies, including at the country level through the United Nations Development Assistance Framework (UNDAF)". It stipulates that "Co-ordinated efforts for the realization of the right to education should be maintained to improve coherence and interaction among all the actors concerned, including the various components of civil society. UNESCO, the United Nations Development Programme, UNICEF, ILO, the World Bank, the regional development banks, the International Monetary Fund and other relevant bodies within the United Nations system should enhance their co-operation for the implementation of the right to education at the national level, with due respect to their specific mandates, and building on their respective expertise. In particular, the international financial institutions, notably the World Bank and IMF, should pay greater attention to the protection of the right to education in their lending policies, credit agreements, structural adjustment programmes and measures taken in response to the debt crisis."[21]

30. It is important to mention that the joint endeavour of UNESCO and CESCR can be a contributory factor in mid-term evaluation of the National EFA Plan at the country level possibly within the framework of the Joint UNESCO-CESCR Expert Group on the Right to Education, created by UNESCO's Executive Board at its 162nd session in September-October 2001.

31. Inter-agency collaboration is crucial to the implementation of the *Dakar Framework for Action*. As lead agency in this international movement, UNESCO is responsible for coordinating actions taken to follow-up the collective commitments made at the World Education Forum. The field of international cooperation must be expanded, by involving not only UNESCO's four official partners in the Education for All movement - the World Bank, UNFPA, UNDP and UNICEF - but also other multilateral agencies, such as ILO, FAO and WHO in the follow-up to the *Dakar Framework for Action*. UNESCO also acknowledges the importance of adding to the debate on the rationalization of financial flows for funding basic education, in cooperation with the Development Assistance Committee (DAC) of the Organisation for Economic Co-operation and Development.

32. What is crucial is that National EFA Plans have nexus with the mechanisms of the United Nations Common Country Assessment (CCA), the United Nations Development Assistance Framework (UNDAF) and the Poverty Reduction Strategy Papers (PRSPs). UNESCO has been striving to move in that direction.[22] It is also necessary to avoid duplication, dispersal and fragmentation of support in the preparation of UNDAF, PRSP, EFA Plans, etc. in the context of inter-agency cooperation.

33. It is critically important to accelerate the process of the preparation of the National EFA Plans and to ensure their effective implementation. Hence, the set of Recommendations for immediate action contained in the Communiqué[23] issued at the end of the first meeting of the High Level Group on Education for All (October 2001) includes a strategy to operationalize the Dakar Framework such that it would "identify: major actions to be taken within specified time-lines; general roles and responsibilities of partners; linkages among activities".

Issues for discussion

34. Enormous efforts are required to be made by the countries and external partners. Countries must, within poverty reduction strategies, where applicable, accelerate progress in order to put in place the Plans, which encompass all EFA goals and take into due consideration both content and process.

35. In that perspective, a vital question is how to enhance the capacity of developing countries to implement National EFA Plans and to encourage and support the use of expertise available nationally and internationally? The Norwegian Government has placed a trust fund at the disposal of UNESCO to support provision of technical assistance for preparation of National EFA Plans at least in 10 developing countries.

36. Clearly, there is need to provide technical support for the Poverty Reduction Strategy Papers (PRSPs) and National EFA Plans. Given the complementarity of these two instruments, the PRSP will greatly benefit from the support to National EFA Plans preparation and vice versa. Several questions need to be addressed: how to improve the coherence of the PRSP/SWAPs, United Nations and EFA processes? How to ensure proper integration of National EFA plans into PRSP, where feasible, as well as in development assistance for greater availability of grants and external aid? And how to ensure effective donor coordination in the context of SWAPs on long term sustainability?

37. Another issue of critical importance is how to elaborate specific strategies in countries in crisis and conflict to reconstruct education ministries and revive education development programmes in collaboration with the civil society and the international community?

38. Reflections are also called for so as to ensure synergy between the National EFA Plans and the Plan of Action for the United Nations Literacy Decade? Mutually reinforcing approaches in the implementation of article 14 of the International Covenant relating to the right to education and that of the Dakar Framework would be important.

Notes

[1] Six reinforcing goals of the Dakar Framework for Action are: improving early childhood care; free and compulsory primary education for all by 2015; equitable access to life skills programmes; achieving a 50 per cent improvement in adult literacy by 2015; eliminating gender disparities by 2005; and achieving measurable improvements in the quality of education. The Dakar Framework Education For All: Meeting Our Collective Commitments, adopted at the World Education Forum, 28 April 2000, Dakar, Senegal (para. 7).

[2] Ibid. (para. 9). These Plans should be developed through more transparent and democratic processes, involving stakeholders, especially peoples' representatives, community leaders, parents, learners, non-governmental organizations (NGOs) and civil society.

[3] "Each National EFA Plan will:

(i) be developed by government leadership in direct and systematic consultation with national civil society;

(ii) attract coordinated support of all development partners;

(iii) specify reforms addressing the six EFA goals;

(iv) establish a sustainable financial framework;

(v) be time-bound and action-oriented;

(vi) include mid-term performance indicators;

(vii) and achieve a synergy of all human development efforts, through its inclusion within the national development planning framework and process."

The Dakar Framework for Action (para. 16).

[4] Plans of action for primary education (art. 14): the United Nations Committee on Economic, Social and Cultural Rights (CESCR) General Comment 11, Geneva, 26 April-14 May 1999. 10/05/99. E/C.12/1999/4.

[5] Ibid.

[6] Ibid., "Plans of action prepared by States parties to the Covenant in accordance with article 14 are especially important as the work of the Committee has shown that the lack of educational opportunities for children often reinforces their subjection to various other human rights violations" (para. 4 of the General Comment).

[7] General Comments No. 13 on the right to education (article 13 of the Covenant), adopted by the Committee on Economic, Social and Cultural Rights at its twenty-first session in 1999. See E/C.12/1999/10, 2 December 1999 (paras. 51 and 52).

[8] UNESCO's Medium Term Strategy (2002-2007), C/4 (para. 57), UNESCO, Paris. Text emphasized in the Strategy.

[9] Ibid.

[10] United Nations General Assembly resolution A/RES/56/116 entitled *United Nations Literacy Decade: education for all*, adopted on *19 December 2001*.

[11] Ibid. The General Assembly requires "setting firm targets and timetables, including gender-specific education targets and programmes, to eliminate gender disparities at all levels of education, to combat the illiteracy of women and girls and to ensure that girls and women have full and equal access to education, and by working in active partnership with communities, associations, the media and development agencies to reach those targets" (para. 4).

[12] Report of the Director-General on the implementation of and follow-up to the Framework for Action of the World Education Forum in Dakar, Doc. 162 EX/7, (para. 13). The questionnaire was comprised of two components: (i) stocktaking of current status of the preparation/strengthening of education development plans as well as the integration of EFA Goals; and (ii) type of technical support required at country level. Most countries that responded to the questionnaire require technical support for the preparation of EFA Plans.

[13] The Dakar Framework for Action (para. 15).

[14] Such Forums "will be strengthened or established to support the achievement of EFA. All relevant ministries and national civil society organizations will be systematically represented in these Forums" (Dakar Framework for Action, para. 16).

[15] "(...) all children, young people and adults have the human right to benefit from an education that will meet their basic learning needs in the best and fullest sense of the term, an education that includes learning to know, to do, to live together and to be. It is an education geared to tapping each individual's talents and potential, and developing learners' personalities, so that they can improve their lives and transform their societies". The Dakar Framework for Action (para. 3).

[16] Op. cit. (para 8).

[17] The Dakar Framework for Action (para. 10).

[18] Further, "in appropriate cases, the Committee encourages States parties to seek the assistance of relevant international agencies, including the International Labour Organization (ILO), the United Nations Development Programme (UNDP), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the United Nations Children's Fund (UNICEF), the International Monetary Fund (IMF) and the World Bank, in relation both to the preparation of

plans of action under article 14 and their subsequent implementation. The Committee also calls upon the relevant international agencies to assist States parties to the greatest extent possible to meet their obligations on an urgent basis" (para. 11).

[19] UNESCO's Approved Programme and Budget 2002-2003 recalls that "the Dakar requests Member States to ensure that they have prepared or reinforced existing national EFA plans by 2002 at the latest. These action plans need to be situated within a well-integrated sector framework and closely linked to poverty eradication and sustainable development strategies". UNESCO's Approved Programme and Budget 2002-2003 C/5 (para. 01112).

[20] Launched by the United Nations Secretary-General at the World Education Forum in Dakar in April 2000, UNGEI is a coherent United Nations system-wide collaborative programme led by UNICEF to improve the quality and level of girls' education and to eliminate gender bias and discrimination in education. Within the framework of UNGEI, UNESCO has made efforts to ensure that gender-related components are included in National EFA Plans. The role of UNESCO is to support UNGEI and, wherever possible, to influence leaders to make commitments in favour of gender equality in education. UNESCO has prepared a working document on Gender Equality in Basic Education - Strategic Framework, with special reference to non-formal education for girls and women. 162 EX/7, op. cit., (para. 16 (b)).

[21] General Comments No. 13 on the right to education (article 13 of the Covenant), adopted by the Committee on Economic, Social and Cultural Rights at its twenty-first session in 1999 (para. 60). See E/C.12/1999/10, 2 December 1999.

[22] Doc. 162 EX/7, op. cit., (para. 12).

[23] Communiqué issued at the end of the first meeting of the High Level Group on Education for All (EFA), convened by the Director-General of UNESCO at UNESCO Headquarters on 29 and 30 October 2001.

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Item 3 of the provisional agenda

SUBSTANTIVE ISSUES ARISING IN THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Follow-up to the Committee's Day of General Discussion on Right to Education (article 13 of the Covenant) and to the World Education Forum(Dakar, April 2000), organized in co-operation with UNESCO

Friday, 10th May 2002, 15.00-18.00h

PREPARATION OF UNESCO'S MONITORING REPORT ON THE IMPLEMENTATION OF THE DAKAR FRAMEWORK FOR ACTION AND POSSIBLE CONTRIBUTION BY CESCR IN DEVELOPING CONCEPTUAL FRAMEWORK.

Document submitted by UNESCO*

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Introduction

1. UNESCO's Constitution provides that "Each Member state shall submit to the Organization, at such time and in such manner as shall be determined by the General Conference, reports on laws, regulations and statistics relating to its educational, scientific and cultural institutions and activities, and on the action taken upon the recommendations and conventions (....)".(Article VIII). Thus, the Organization monitors the implementation of a number of standard-setting that it has elaborated relating to the right to education. In this context, EFA 2000 Assessment presented the results of a decade long efforts in the implementation of the *World Declaration on Education for All: Meeting Basic Learning Needs* (1990). It showed that despite an expansion in the education system, the disparities observed in access and quality are on an unprecedented scale.

2. The international community made a collective commitment at the World Education Forum (Dakar, April, 2000) to realise before the year 2015 basic education for all as a fundamental human right. Effective implementation of the Dakar Framework for Action adopted at the World Education Forum is indeed one the biggest moral challenges of our times and requires monitoring in keeping with the provisions of article VIII of UNESCO's Constitution, mentioned above. As a co-ordinating agency for this global movement, UNESCO has assumed even greater responsibility in the field of the right to education. The Organization has, therefore, readjusted its education programme so as to focus on the Dakar objectives and priorities for achieving basic education for all, according high importance to monitoring the implementation of the Dakar goals.

MONITORING PROVISIONS AND MECHANISM IN THE DAKAR FRAMEWORK FOR ACTION

3. The governments, organizations, agencies, groups and associations represented at the World Education Forum declared that they "will strengthen accountable international and regional mechanisms to give clear expression to these commitments". In order to achieve the goals set by the Dakar Framework for Action, they pledged themselves to a strategy, inter alia, to: "systematically monitor progress towards EFA goals and strategies at the national, regional and international levels"; (para. 8 xi) and to "build on existing mechanisms to accelerate progress towards education for all" (para. xii)[1]. Moreover, the Dakar Framework for Action stipulates that "Political will and stronger national leadership are needed for the effective and successful implementation of national plans in each of the countries concerned". (Para. 10).

4. In line with UNESCO's overall responsibility for co-ordinating the efforts of the international community for the realisation of the objectives of Dakar Framework for Action, monitoring developments in the implementation of its objectives is critically important. In a broader perspective, this must be linked to UNESCO's wide-ranging normative action. It must also be linked the way the implementation of the standard-setting instruments adopted by the United Nations is monitored.

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[1] The other elements of the strategy to which they pledged and which a bearing on the monitoring the follow up to the Dakar Framework for Action are:

(ii) promote EFA policies within a sustainable and well-integrated sector framework clearly linked to poverty elimination and development strategies;

(iii) ensure the engagement and participation of civil society in the formulation, implementation and monitoring of strategies for educational development;

(iv) develop responsive, participatory and accountable systems of educational governance and management;

[...]

(viii) create safe, healthy, inclusive and equitably resourced educational environments conducive to excellence in learning, with clearly defined levels of achievement for all;

(ix) enhance the status, morale and professionalism of teachers.

The Dakar Framework for Action - Education For All: Meeting Our Collective Commitments, adopted at the World Education Forum, 28 April 2000, Dakar, Senegal, April 2000 (para. 8).

Linking the Implementation to the Dakar Framework for Action to the Work of the United Nations Treaty Bodies and to the Implementation of other UN Instruments

5. Monitoring the follow-up to the Dakar Framework for Action and developments related to the right to education must be seen in the context of the work of the relevant United Nations Treaty Bodies, notably the Committee on the Rights of the Child and the UN Committee on Economic, Social and Cultural Rights (CESCR). It must also be seen in the context of (monitoring) reports the implementation of the relevant United Nations declarations.

6. UNESCO co-operates with the Committee on the Rights of the Child in monitoring the implementation of the Convention on the Rights of the Child (1989). The Organization contributed in the process of elaborating the General Comment No.1 (2001) on Article 29 (1) of the Convention on the Rights of the Child adopted by the Committee. This General Comment that "The child's right to education is not only a matter of access but also of content" It reflects fully UNESCO's concern, especially in view of the *Dakar Framework for Action*. UNESCO looks forward to working with the Committee on the Rights of the Child.

7. The United Nations Secretary General's Report (September 2001) on the *World Declaration on the Survival, Protection and Development of Children*, adopted at the World Summit for Children 1991, presents a critical appraisal of the progress achieved in the implementation of the Plan of Action for the Declaration, specially the challenges that lie ahead in universalizing access to basic education. It also depicts trends and the lessons learnt, linking these to the objectives and goals of the Dakar Framework for Action, wherever appropriate[2]. The Report would thus be useful as regards the reflection on the importance of the follow up to the Dakar Framework for Action in the forthcoming General Assembly Special Session on Children in May 2002 in formulating the programme of action.

8. The implementation of the UN General Assembly Resolutions containing provisions on the right to education is also pertinent to the follow up to the Dakar Framework for Action. Thus, the UN General Assembly Resolution 56/116 on '*United Nations Decade Literacy Decade: education for all'* (adopted on 19 December 2001) urges Member States, in close partnership with international organizations as well as non-governmental organizations "to promote the right to education for all and to create conditions for all for learning throughout life", while recognizing that persisting major problems require even more forceful and concerted action at the national and international levels so as to achieve the goal of education for all. Monitoring the implementation of the Dakar Framework for Action is closely linked with the proposed Plan of Action for the United Nations Literacy Decade (2003-2012), especially as this would reinforce the conceptual and legal bases of basic education for all as a fundamental human right, as reaffirmed by the Dakar Framework for Action.

9. The resolution[3] 2001/29, entitled '*the right to education*' adopted by the UN Commission on Human Rights on 20 april 2001 welcomes "the Dakar framework for action adopted at the world education forum held in Dakar in April 2000, and the goals agreed upon at its adoption". The follow-up to this resolution would contribute to the right to education as the resolution calls upon the States to "ensure progressively and on the basis of equal opportunity that primary education is compulsory, accessible and available to all"(para. 3). This resolution reiterates invitation to unicef and to UNESCO "to submit to the Commission information pertaining to their activities in promoting primary education, with specific reference to women and children, particularly girls.

10. UNESCO and UNICEF co-operate a spirit of recognizing and benefiting from each other's strengths and comparative advantages and share concern to meet the basic educational needs of children and their families. importance of UNESCO's normative action in the context of the follow-up to the Dakar Framework is recognized in the Framework Agreement between UNESCO and UNICEF on Collaboration in the Field of Education, of 9 February 1999, which sets out the main areas of collaboration on the basis of

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[2] See "We the Children – Meeting the Promises of the World Summit for Children, UN Secretary General's Report", United Nations, New York, September 2001.

[3] Commission on Human Rights, Resolution 2001/29, (E/CN.4/RES/2001/29), dated 20 April 2001.

the commitments and interests shared by the two organizations. Consultations between them on the follow-up to the *Dakar Framework for Action* focused on their respective strengths: "UNESCO, with its mandate to take on a leading, normative role" is well placed to "promote policy discussions around basic education; set standards for principles of action and indicators of assessment; engage in high-level advocacy; strengthen partnerships with other EFA actors(...)[4]. The UNESCO/UNICEF Joint Committee on Education (JCE), established in 1989 addresses recommendations to draw the attention to new challenges and important trends in those areas.

11. *"The 10-Year United Nations Girls' Education Initiative (UNGEI)"* which was launched by the United Nations Secretary-General at the World Education Forum in Dakar in April 2000, is a coherent United Nations system-wide collaborative programme led by UNICEF to improve the quality and level of girls' education and to eliminate gender bias and discrimination in education. Within the framework of UNGEI, UNESCO has made efforts to ensure that gender-related components are included in National EFA Plans. The role of UNESCO is to support UNGEI and, wherever possible, to influence leaders to make commitments in favour of gender equality in education. UNESCO has prepared a working document on Gender Equality in Basic Education – Strategic Framework, with special reference to non-formal education for girls and women"[5]. Particular attention is focused on issue of access and equity concerning girls' opportunities for primary schooling.

12. Action in this respect would be strengthened as a follow up to the United Nations Millennium Declaration. In this Declaration, it is resolved to "ensure that (...) children everywhere, boys and girls, will be able to complete a full course of primary schooling and that girls and boys will have equal access to all levels of education" by 2015[6].

Monitoring the Implementation of the Right to Basic Education for All and UNESCO's collaboration with the UN Committee on Economic, Social and Cultural Rights (CESCR)

13. UNESCO has developed, particularly since 1999, closer collaboration with CESCR. Both UNESCO and CESCR have shared concerns and common objectives for promoting the right to education and achieving Education For All (EFA) goals. The General Comment No. 13 on Article 13 (right to education)[7] of the International Covenant, elaborated by CESCR in co-operation with UNESCO, bears evidence to their collaborative spirit. It draws on the normative instruments and experience of UNESCO and specifically mentions the right to basic education for all as recognized by the World Declaration on Education for All (1990).

14. The monitoring role of CESCR covers the right to education, as set out in Articles 13 and 14 of the International Covenant on Economic, Social and Cultural Rights. Under the provisions of Article 16 § 1 of the International Covenant, the States have the obligation to submit reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized in the Covenant. These reports are examined by the CESCR in its periodic session, through a dialogue with the state party to the International Covenant. CESCR) thus is entrusted with the task of monitoring states parties' compliance

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[4] Recommendations of the UNESCO/UNICEF Joint Committee on Education, documents 160 EX/9 and Corr., Paris, September 2000 (paras. 3 and 4).

[5] Report of the Director-General on the implementation of and follow-up to the Framework for Action of the World Education Forum in Dakar, 162 EX/7 (paragraph 16).

[6] United Nations General Assembly resolution 55/2, adopted on 8 September 2000 (Para. 19).

[7] This General Comment states: "In general terms, fundamental education corresponds to basic education as set out in the World Declaration on Education For All" (para. 22). It makes reference in several places to the UNESCO's Convention against Discrimination in Education (1960) and contains several provisions relating to non-discrimination in the field of education. General Comments No. 13 on the right to education (Article 13 of the Covenant), adopted by the Committee on Economic, Social and Cultural Rights at its twenty-first session in 1999. E/C. 12/1999/10, 2 December 1999.

with their obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR), including the right to education as enshrined in the Covenant[8].

15. The CESCR attaches importance to the follow up to the Dakar Framework for Action, acknowledging that it "corresponds with major preoccupations" of its own as it is linked with the implementation of Articles 13 and 14 of the International Covenant. What is commendable is that since the World Education Forum (April 2001), CESCR has begun to have a dialogue with the State Parties to the International Covenant while examining their country reports on the status of the preparation of the national action plans, anticipated by the Dakar Framework and how they propose to implement these Plans.

16. UNESCO has also started sharing with CESCR information on the implementation of UNESCO's normative instruments relating to the right to education, in particular, developments relating to the follow up to the Dakar Framework for Action. As a result, UNESCO's collaboration with CESCR has grown significantly. CESCR is specially most willing in working together with UNESCO for giving follow up to the Dakar Framework for Action and to strengthen "practical and especific ways" in which to accomplish *common objectives*, [9] even as UNESCO realises the importance of collaborative work, with the"the hope that this will impart synergy to our common endeavour in monitoring and promoting the right to education in all its dimensions"[10].

17. As a follow up to this correspondence, the Informal Meeting on Monitoring the Right to Education: Dialogue between the Committee on Conventions and Recommendations (CR) and the Chairperson of CESCR was organized at UNESCO Headquarter on 21 May 2001. This dialogue took place on the occasion of the twenty-fifth anniversary of the entry into force of the International Covenant on Economic, Social and Cultural Rights and the first anniversary of the Dakar Framework for Action and led to fruitful and instructive exchange of experience and ideas. It initiated the process for developing practical approaches and mutually reinforcing working methods in monitoring the implementation of the right to education in all its dimensions. Emphasis was placed on the complementarity of the work of UNESCO and CESCR. The dialogue afforded UNESCO the opportunity to share with CESCR recent developments, including the working methods of CESCR, especially with a view to achieving the right to basic education for all, to which CESCR gives priority as well[11].

18. It is significant to note that the propositions by CESCR on the occasion of one day discussion on Substantive Issues arising in the *Implementation of the International Covenant on Economic, Social and Cultural Rights,* organized on 7 May 2001 during the 25th Session of CESCR commends UNESCO's work and states that CESCR shares UNESCO's major preoccupations for promoting the right to basic education for all and in that spirit, the follow-up to the Dakar Framework for Action.

19. The work of CESCR illustrates how monitoring the right to education as enshrined in the International Covenant on Economic, Social and Cultural Rights (ICESCR) relates to the implementation of the Dakar Framework for Action.

Working methods of the United Nations Committee on Economic, Social and Cultural Rights (CESCR) for Monitoring the implementation of the Right to Education

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[8] The Committee consists of 18 independent experts who are nominated by states and then voted by ECOSOC to serve for four-year terms. The Committee members are independent experts acting in their personal capacities and are *not* governmental representatives.

[9] This is acknowledged in the letter the Chairperson of CESCR wrote on 22 August 2000 to the Director-General of UNESCO.

[10] The reply by the Director-General of UNESCO dated 10 November 2000 to the letter by the Chairperson of CESCR dated 22 August 2000.

[11] Statement by Professor Virginia B. DANDAN, Chairperson of CESCR, Monitoring the Right to Education: Dialogue between the Committee on Conventions and Recommendations (CR) and the Chairperson of the UN Committee on Economic, Social and Cultural Rights (CESCR) – Informal Meeting, Executive Board, 161st Session, UNESCO, Paris, 21 May 2001.

20. States that have chosen to ratify the Covenant on Economic, Social and Cultural Rights (ICESCR) are obliged to progressively realise the enumerated rights, subject to the availability of resources, among which the right to education is indeed of fundamental importance.

21. Every five years, each state party is obliged to submit a report to the Committee. Many states go to a lot of trouble and prepare excellent reports running to hundreds of pages. These reports cover all the rights in the Covenant and explain what the state is doing to implement the right to education (articles 13 and 14 of the International Covenant).

22. The Committee sets aside one to one and a half days to consider the report, in public session, with the state. The state usually sends a delegation from the capital to discuss the report with Committee members. The delegation is often headed by a Minister and may number fifteen or more governmental representatives. Committee members ask the delegation questions; the delegation does its best to reply – thus, a 'constructive dialogue' takes place. The Committee's over-arching role is to help the state better implement its legally binding obligations under the Covenant.

23. At the end of this public process, the Committee goes into private session and agrees on 'Concluding Observations' about the state. Once agreed in private among Committee members, these Concluding Observations are then made public. The Observations give credit to the state for any progress it has made. They acknowledge the obstacles the state is encountering e.g. the introduction of a structural adjustment programme. They identify the Committee's particular concerns e.g. low-levels of literacy or discrepancies between primary school enrolment rates for girls and boys. And they make sensible recommendations and suggestions. A prominent role is given to UNESCO in the *Concluding Observations*, recommending to Governments further action in this respect[12].

24. Five years after the Committee's constructive dialogue and the adoption of its Concluding Observations, the cycle repeats itself, enabling the Committee to check the progress made by the state in question.

25. It is highly significant to enhance the growing co-operation between UNESCO and CESCR for monitoring developments in the field of the right to education with a focus on the follow up to the Dakar Framework for Action [13]. This would be propitious as a follow up to the resolution on economic, social and cultural

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[12] The reports of several states considered by CESCR in its most recent sessions bear evidence to this. Following the constructive dialogue with the Bolivian delegation, the Committee adopted Concluding Observations regarding Bolivia, including the following:

> The Committee recommends that the State party gives priority to education in its budget, establishes literacy programmes for adults, in particular in the rural areas, and makes efforts to increase the school attendance levels of children under the age of nine. In this regard, the State party is urged to implement a comprehensive National Education for All Plan, as anticipated by paragraph 16 of the Dakar Framework of Action, taking into account the Committee's General Comments numbers 11 and 13. (para 44)

Similar recommendations were adopted in relation to Honduras and Venezuela. In its Concluding Observations on Honduras, the Committee specifically added:

> The State party is also encouraged to seek technical advice and assistance from UNESCO in relation to both the formulation and implementation of its EFA Plan. (para 51)

A similar recommendation was adopted in relation to Venezuela.

[13] Statement by Virginia B. Dandan, Chairperson, UN Committee on Economic, Social and Cultural Rights- Monitoring the Right to Education: Dialogue between the Committee on Conventions and Recommendations (CR) and the Chairperson of the UN Committee on Economic, Social and Cultural Rights (CESCR) – Informal Meeting, Executive Board, 161st Session, UNESCO, Paris, 21 May 2001.

rights adopted by the UN Commission on Human Rights in April 2001. The Commission decided "to encourage all UN specialized agencies and programmes whose activities bear upon economic, social and cultural rights to enhance their co-operation and increase co-ordination with the Committee on Economic, Social and Cultural Rights in a manner which respects their distinctive mandates and promotes their policies, programmes and projects"[14]. By the same token, the resolution also enjoins the Committee to enhance "its co-operation with United Nations specialized agencies, programmes and other bodies working on issues that bear upon the Covenant".

26. UNESCO and CESCR have recently begun to work together in a mutually supportive way. This co-operation is now becoming institutionalised in the wake of the recent decision by the Executive Board of UNESCO to establish a Joint UNESCO/CESCR Expert Group on the Right to Education. This will enable both of them to collaborate even more closely in realistic and practical ways for the realisation of the right to education as a fundamental human right.

FOLLOW UP TO THE DAKAR FRAMEWORK FOR ACTION AND MONITORING REPORT ON EFA

27. The *Dakar Framework for Action* called for a Monitoring Report to inform the deliberations of the High-Level Group as part of their role in "holding the global community to account for commitments made in Dakar". UNESCO, therefore, recognizes that "Monitoring the state of basic education in the world plays a key role in UNESCO's Action Plan"[15].

28. A first, and preliminary *Monitoring Report on Education for All*, 2001 was prepared by UNESCO in collaboration with major EFA partners, notably UNICEF and the World Bank, as the key document at the High-Level Group Meeting, which UNESCO's Director-General convened at UNESCO Headquarter in October 2001. It presents the progress of the EFA movement, particularly by highlighting important trends and findings. It is a valuable tool for advocacy and information sharing purposes. It also depicts problems and prospects for achieving the right to education. "It is now urgent than ever for the community of nations to redouble their efforts to work as partners towards the day when Education for All is translated from a seemingly distant dream to a reality for every child, young person and adult. Basic education is not only a "fundamental human right" for every individual; it is, as the Dakar Framework for Action puts it, key to sustainable development and peace and stability among nations"[16].

29. The Communiqué issued at the end of the first meeting of the High Level Group calls upon all EFA partners to redouble their efforts to meet the goals and targets of Education for All. It states that an authoritative, analytical, annual EFA Monitoring Report should be produced drawing upon national data — quantitative and qualitative — and assessing the extent to which both countries and the international community are meeting their Dakar commitments.

30. Keeping in view the recommendations of the High Level Group, UNESCO consulted key partners to discuss how the Monitoring Report can best be prepared, managed and resourced. The First meeting of the Editorial Board for Monitoring Report on Education for All, organized for this purpose in January 2002 at UNESCO Headquarter, Paris, recommended that the Monitoring Report should set EFA in the wider context of sustainable development. It should aim to create awareness, induce change and alert the world to

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[13] In the last two years, UNESCO and the Committee have greatly improved their collaboration. For example, UNESCO was closely involved in the drafting of the Committee's recent General Comment No.13 on the right to education (which was adopted before the World Education Forum was organized). It is not a coincidence that this General Comment – which is the most detailed normative elaboration of the right to education in the UN system - contains numerous references to UNESCO's standard-setting instruments, notably the World Declaration on Education for All (1990).

[14] E/CN.4/2001/L.42. The Commission on Human Rights, which consists of governmental representatives, is the most influential human rights body in the UN system.

[15] Implementation of and follow-up to the Framework for Action of the World Education Forum in Dakar, Document 160 EX/8 (paragraph 15).

[16] Foreword to the *Monitoring Report on Education for All*, 2001 by the Director General of UNESCO.

the critical issues, bottlenecks and problems in EFA progress and serve as an advocacy tool, based on a rigorous analytical approach[17].

31. It was also recommended that the Monitoring Report must include progress on all six Dakar goals in each edition. In 2002 it should in addition report on progress in the preparation of national EFA plans, and an attempt should be made to assess the nature and extent of political commitment to EFA. The 2002 report must be cast in the framework of assessing how far we have come in the two years since Dakar. The Monitoring Report, which should be authentic, independent, and authoritative, should present analysis — it should have a prescriptive, not merely descriptive role. The Report should act as an early warning system in order to identify potential points of challenge and difficulty in EFA

32. The main responsibility for collection, analysis, and interpretation of data on the six Dakar goals has been entrusted to the UNESCO's Institute for Statistics (UIS). The Institute has set up the EFA Observatory. Its objectives include: (1) Collection, analysis and dissemination of up-to-date information on the state of education required by countries, regions and the international community to monitoring progress towards the goal of EFA; (2) provide regular assessments to help governments develop, review and amend national policies as necessary to ensure that the EFA goals are achieved in all countries as soon as possible; (3) Develop statistical systems in order to provide 'early warnings' of possible failure to attain the long-term targets; (4) Develop interim targets positioned at carefully calculated intervals so that interim monitoring can take place and appropriate interventions can be implemented quickly and effectively. The Institute will develop an "EFA development index" that will bring together several pertinent indicators as regards progress towards the objective of Education for All; new indicators will be developed, making it possible to tackle more precisely questions of quality, results, etc. »[18]. There is need for "new procedures for collecting additional data to measure educational quality" and "to fine-tune existing EFA Indicators to the diverse needs of developing countries"[19].

33. Although 18 Core EFA Indicators which were developed for the purpose of EFA 2000 Assessment[20] may continue to be used for monitoring, there will be a need for more for the purposes of the annual Monitoring Report — on the progress of national plans, flagships, political commitment, the role of donors and so on. There was agreement on the three categories of indicators presented by UIS:

- established indicators which are working satisfactorily, e.g. enrolment indicators
- existing indicators which need further work, e.g. literacy indicators
- indicators to be developed, e.g. on educational quality.

34. The purpose of the Annual EFA Monitoring Report (to be prepared by UNESCO, with inputs from EFA partners, under the guidance of the Working Group on EFA), is to provide an account of the progress that countries and support agencies have achieved towards the goal of EFA, as well as to highlight important trends and findings and to point to future actions. This Report is also intended to share information with partners, organizations and other stakeholders involved in the implementation of EFA.

35. It is significant that the First Meeting of the Editorial Board for Monitoring Report on Education for All emphasized the importance of "the Rights-based approach": two aspects will need to be covered: 1) how far is the human right of access to education being fulfilled, and 2) how far are human rights being taught through the values presented in educational processes and systems?

36. Collaborating work by CESCR and UNESCO on monitoring the developments in the right to education would enable to explore further the right-based approach which deserves full attention as well as the concept of education as *common good*. In this respect, it is pertinent to bear in mind Part III of the General Comment No. 13 on article 13 of the International Covenant on Economic, Social and Cultural Rights, elaborated by the UN Committee

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[17] Report of the First meeting of the Editorial Board for Monitoring Report on Education for All, organized at UNESCO Headquarter, Paris (29 - 30 January 2002). The Meeting brought together key stakeholders from the international community (ADEA, UNDP, UNICEF, World Bank), NGOs, representatives of bilateral donors.

[18] Ibid.

[19] Ibid.

[20] Statistical Document Education for All 2000 Assessment, International Consultative Forum on Education for All, World Education Forum, Dakar, Senegal, 26-28 April 2000 (Appendix II).

on Economic, Social and Cultural Rights (CESCR) in collaboration with UNESCO entitled "Obligation of Actors other than State Parties". It provides that "When examining the reports of States parties, the Committee will consider the effects of the assistance provided by all actors other than States parties on the ability of States to meet their obligations under article 13. The adoption of a human rights-based approach by United Nations specialized agencies, programmes and bodies will greatly facilitate implementation of the right to education".[21].

ISSUES FOR DISCUSSION

37. Contribution by CESCR to the preparation of future Monitoring Reports on the Right to Education, especially right-based approach, will be vital. This will make it possible for UNESCO to benefit from the rich experience CESCR possesses in this field. This will also be significant in the context of the work of the UNESCO/CESCR Joint Expert Group, whose coming into being will institutionalise the collaboration between CESCR and UNESCO.

38. Among the serious questions to be addressed, enabling the marginalized and under-privileged sections of society, especially girls and residents of remote rural areas, to exercise their right to education, is indeed a challenging task. How to give impetus to mass social mobilisation campaigns and advocacy measures, involving more actively civil society, for promoting the right to education?

39. The Dakar Framework for Action refers to the right to basic education for all as a fundamental human right and to primary education that is free, compulsory and of good quality. Can UNESCO/CESCR jointly with EFA partners agree on a universal definition of quality and in that framework to develop indicators for measuring quality education? In this respect, it may be mentioned that at an Informal Expert Consultation, organized at UNESCO Headquarter in March 2001, experts recommended that the possibility of UNESCO/CESCR adopting consistent right to education indicators as well as a common understanding of key concepts (such as 'basic education', 'quality education' etc) be explored.

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[21] General Comments No. 13 on the right to education (Article 13 of the Covenant), adopted by the Committee on Economic, Social and Cultural Rights at its twenty-first session in 1999 (Para. 60). see E/C. 12/1999/10, 2 December 1999. This General Comment states : "In general terms, fundamental education corresponds to basic education as set out in the World Declaration on Education For All". It makes reference in several places to the UNESCO's Convention against Discrimination in Education (1960) and contains several provisions relating to non-discrimination in the field of education.